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Proposed Revisions to Grazing Regulations for the Public Lands

Draft Environmental Impact Statement
DES 03-62



Prepared by
The Department of the Interior
Bureau of Land Management



December 2003

Livestock grazing on BLM lands near Price, Utah. (Jerry Sintz, BLM Utah State Office [retired])



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



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Dear Concerned Citizen:

The *Proposed Revisions to Grazing Regulations for the Public Lands* Draft Environmental Impact Statement is enclosed for your review. The draft analyzes the environmental effects of proposed revisions as well two alternatives, including no change to the regulations. Your comments and views on the proposed changes, as well as your advice on the accuracy and adequacy of the analysis, would be most helpful.

The proposed changes recognize that public land grazing has its roots in the settlement of the West. Communities and families still rely on a combination of public and private lands to sustain the rural landscapes and open spaces. Many changes have been made in livestock grazing management and practices to improve the health of the public rangelands since the passage of the Taylor Grazing Act in 1934 and the Federal Land Policy and Management Act in 1976. The changes outlined in the enclosed document are another important step forward to improve grazing, drawing upon the lessons learned since the previous revisions eight years ago.

The intent of the proposed revisions is to improve working relations with permittees and lessees, protect the health of the rangelands, and increase administrative effectiveness and efficiency.

Since March 2003, we have met with many individuals and groups on these draft revisions and received more than 8,300 comments on them. The high level of public interest and involvement has been useful in helping us develop the proposed changes. By placing a greater emphasis on cooperation and consultation, more sustainable progress in the health of public rangelands should be realized. Your ideas and input on the best approach for meeting the goals listed above can further improve grazing on public lands throughout the West.

We encourage you to submit comments using our interactive Web-based "ePlanning" system at <http://www.blm.gov/grazing>. If you do not have internet access, please mail your comments to: Director (220), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153, Attn: Revisions to Grazing Regulations DEIS. You may also deliver your comments to: 1620 L Street, NW, Suite 1075, Washington, D.C. 20036, Attn: Revisions to Grazing Regulations DEIS.

Thank you for your time, attention and thoughts on the *Proposed Revisions to Grazing Regulations for the Public Lands*.

Sincerely,

Kathleen Clarke
Director

Proposed Revisions to Grazing Regulations for the Public Lands

Draft Environmental Impact Statement

DES 03-62

Because this publication was developed using a test version of ePlanning, you might notice that some text does not meet standard formatting conventions. For example, there might be a single line of text at the bottom or top of a page, extra spacing between words and sentences, or unusual justification of text within tables. As ePlanning software continues to improve, publication formatting will also improve. Thanks for your understanding.

Prepared by
The Department of the Interior
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December 2003

Abstract

Proposed Revisions to Grazing Regulations for the Public Lands

Environmental Impact Statement

Draft (X) Final ()

The United States Department of the Interior, Bureau of Land Management (BLM)

1. Type of Action: Administrative (X) Legislative ()
2. Abstract: The BLM is proposing to revise grazing regulations for the public lands, 43 CFR Part 4100, Grazing Administration—Exclusive of Alaska. The proposed revisions are intended to improve working relations with permittees and lessees, to protect the health of the rangelands, and to increase administrative efficiency and effectiveness, including resolution of legal issues. The grazing regulations govern all public lands that have been identified as suitable for livestock grazing. These lands presently include approximately 160 million acres in the western United States. This Draft Environmental Impact Statement (DEIS) is a national-level, programmatic EIS that documents the ecological, cultural, social, and economic effects that would result from implementing the proposed regulatory changes. Also analyzed in this DEIS are the projected effects of continuing under the existing regulations (the "no action" alternative) and a "modified" alternative that reflects several modifications to the proposed action.
3. For further information, contact: Molly S. Brady, Bureau of Land Management, 202/452-7714.
4. Comments on the DEIS must be received no later than 60 days after the Environmental Protection Agency (EPA) notice of availability (NOA) is published in the *Federal Register*. Comments are to be submitted electronically using the BLM's "ePlanning" Web-based public comment system. You may access ePlanning at <http://www.blm.gov/grazing/>. If you do not have access to a computer, comments may be mailed to: Director (220), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attn: Revised Grazing Regulations DEIS. You may deliver your comments to: 1620 L Street, NW, Suite 1075, Washington, D.C. 20036, Attn: Revisions to Grazing Regulations DEIS.

Comments on the DEIS should be as specific as possible and address the adequacy of the DEIS or the merits of the alternatives discussed, or both.

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December 2003

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Executive Summary

Introduction

The BLM proposes to revise its regulations concerning the administration of livestock grazing on public lands. These revisions are needed to advance BLM's goal of promoting cooperation to achieve rangeland management objectives. The regulatory revisions focus on improving working relations with permittees and lessees, protecting the health of the rangelands, and increasing administrative efficiency and effectiveness. In addition, the revisions are intended to resolve several legal issues.

More than 160 million acres of public lands in the western United States have been determined to be suitable for livestock grazing and are subject to these regulations. The BLM administers its grazing program—excluding Alaska—under 43 CFR 4100 of the Code of Federal Regulations. These regulations implement the laws that govern public land grazing, including the Taylor Grazing Act of 1934 (TGA), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Public Rangelands Improvement Act of 1978 (PRIA). The last major change to these regulations occurred in 1995. These proposed revisions leave intact many of the revisions from 1995—most notably the establishment of Resource Advisory Councils and Rangeland Health Standards and Guidelines.

This Draft Environmental Impact Statement (DEIS) is a national-level, programmatic EIS that documents the ecological, cultural, social, and economic effects that would result from implementing the proposed regulatory changes. Because there seems to be substantial controversy regarding the degree to which the proposed regulations affect the human environment, the BLM has determined that an environmental impact statement is required.

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on March 3, 2003. The BLM held four public scoping meetings in March, 2003, in Albuquerque, New Mexico; Billings, Montana; Reno, Nevada; and Washington, D.C. More than 8,300 comments were received. Whereas most of the comments were form letters, 35 letters containing substantive comments were received from special interest groups and State and Federal agencies.

Proposed Action and Alternatives

The BLM considers three alternatives in this analysis: a "No Action Alternative," the "Proposed Action Alternative," and a "Modified Action Alternative."

No Action Alternative—The No Action Alternative analyzes the effects of continuing to administer the public lands grazing program under the present regulations.

Proposed Action Alternative—Under the Proposed Action Alternative, the BLM proposes to revise regulations to address issues that have surfaced during administration of the grazing program or that were raised during public scoping. Proposed regulatory revisions are organized under three categories.

Improving Working Relations with Grazing Permittees and Lessees—Under this category, the proposed rule would:

- Require BLM to analyze and document the relevant social, economic and cultural effects of proposed changes in grazing preference and incorporate such analyses into appropriate NEPA documents.
- Require phase-in of changes in grazing use (decreases or increases) of more than 10% over a 5-year period, consistent with existing law.

- Provide for joint ownership of range improvements—changes would allow the BLM and a grazing permittee to share title of certain permanent range improvements, such as a fence, well, or pipeline, if they are constructed under a Cooperative Range Improvement Agreement.
- Require BLM to cooperate with State, local, or county established grazing boards in reviewing range improvements and allotment management plans on public lands.
- Clarify that an opportunity to review and provide input on biological assessments and biological evaluations prepared under the Endangered Species Act be provided to affected permittees or lessees, States having lands or responsibility for managing resources within the areas, and the interested public.

Protecting the Health of Rangelands—Under this category, the proposed rule would:

- Remove the 3-consecutive-year limit on temporary nonuse of a grazing permit by allowing livestock operators to apply for nonuse for no longer than 1 year at a time, whether for conservation or business purposes. In other words, there would no limit on the number of consecutive years that permittees or lessees could be authorized temporary nonuse however BLM could only authorize nonuse for one year at a time.
- Require assessments and monitoring of resource conditions to support BLM determinations of whether existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve rangeland health standards or to conform with guidelines for grazing administration.
- Provide additional time (as long as 24 months) after a determination that grazing practices or levels of use are significant factors in failing to achieve standards and guidelines for BLM to formulate, propose and analyze actions, to comply with all applicable laws such as NEPA or ESA, and to complete all consultation, cooperation and coordination requirements before a final decision is reached on the appropriate actions.

Increasing Administrative Efficiency and Effectiveness—Under this category, the proposed rule would:

- Eliminate the "conservation use" permit regulatory provisions to comply with Federal court rulings.
- Expand the definition of "grazing preference" to include an amount of forage on public lands attached to a rancher's private "base" property, which can be land or water. This expanded definition, similar to one that existed from 1978 to 1995, makes clear that grazing preference has a quantitative meaning (forage amounts, measured in Animal Unit Months) as well as a qualitative one (precedence of position in the "line" for grazing privileges).
- Modify the definition of "interested public" to ensure that only those individuals and organizations who actually participate in the process are maintained on the list of interested publics. The regulations with respect to the interested public is also revised to improve efficiency in the BLM's management of public lands grazing by reducing the occasions in which the Bureau is mandated to involve the interested public. Under this provision, the BLM could involve the public in such matters as day-to-day grazing administration, but would no longer be required to do so. The BLM would continue to require consultation, cooperation, and coordination with the interested public in grazing planning activities such as allotment management planning or range improvement planning.

- Provide flexibility to the Federal government in decisions relating to livestock water rights by removing the requirement that the BLM acquire, perfect, maintain, and administer water rights in the name of the United States where allowed by State law.
- Clarify that an applicant for a new permit or lease will be deemed to have a record of satisfactory performance when the applicant has not had any Federal or State grazing permit or lease cancelled in whole or in part for violation of the permit or lease within the 36 calendar months immediately preceding the date of application, and a court of competent jurisdiction does not bar the applicant or affiliate from holding a Federal grazing permit or lease.
- Clarify what is meant by changes in grazing use "within the terms and conditions of permits and leases." Under the present regulations, the BLM can approve changes in grazing use within the terms and conditions of a permit or lease. The proposed regulations clarify that "within the terms and conditions" means temporary changes to livestock number, period of use, or both, that would result in grazing use where forage removal does not exceed the amount of active use specified in the permit or lease, and such grazing use occurs not earlier than 14 days before the begin date specified on the permit or lease and not later than 14 days after the end date specified on the permit or lease.
- Increase certain service charges to reflect more accurately the cost of grazing administration. (The service charges apply to the BLM's issuance of livestock crossing permits, transfer of grazing preferences, and cancellation or replacement of grazing bills.)
- Clarify that if a livestock operator is convicted of violating a Federal, State, or other law, and if the violation occurs while he is engaged in grazing-related activities, the BLM may take action against his grazing permit or lease only if the violation occurred on the BLM-managed allotment where the operator is authorized to graze.
- Clarify how the BLM will authorize grazing if a Bureau decision affecting a grazing permit is "stayed" pending administrative appeal. A provision is also added to address the case of a stay on a decision related to a grazing preference transfer. Under the proposed regulations, if a stay is granted on a decision to modify or renew a grazing permit or lease or to offer a permit or lease to a preference transferee, then the immediately preceding authorization and any terms and conditions therein would not expire, and grazing would continue under the immediately preceding authorization.
- Clarify that a biological assessment or biological evaluation, prepared in compliance with the Endangered Species Act, is not a decision and therefore is not subject to protest or appeal.

The proposed regulations also include additional regulatory text clarifications and minor modifications.

Modified Action Alternative—The Modified Alternative contains revisions similar to those of the Proposed Action, with the following exceptions:

- Makes the provision that requires phase-in of grazing decreases (and increases) of more than 10% over a 5-year period discretionary rather than mandatory.
- Extends the present 3-consecutive-year limit on temporary nonuse of a grazing permit to a 5-year limit rather than unlimited consecutive years as proposed.
- Allows for discretion by the BLM manager in determining what data are necessary to support evaluations of whether an allotment is meeting rangeland health standards and

to make a determination as to whether existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve rangeland health standards or to conform with guidelines for grazing administration.

- Eliminates several Federal or State laws and regulations, from the list of prohibited acts identified in the existing regulations, regarding placement of poisonous bait or hazardous devices, application or storage of pesticides, herbicides, or other hazardous materials, alteration or destruction of natural stream courses, pollution of water sources, illegal take, destruction or harassment of wildlife, and illegal removal or destruction of archaeological or cultural resources. The consequence would be that a permittee or lessee who is convicted and penalized for violating these State or Federal laws would not be subject to the possibility of having his permit or lease withheld from issuance, or suspended or cancelled.
- Adds a requirement that certified weed seed-free forage, grain, straw, or mulch be used when required by the authorized officer.

The alternatives are compared and described in Table ES-1 "Comparison of Alternatives."

Effects of the Proposed Alternative

There are no irreversible or irretrievable commitments of resources directly resulting from the proposed regulation changes nor are there any projected discernable effects from short-term uses on long-term productivity of resources arising from this proposed rulemaking. There may be some short-term adverse effects that cannot be avoided because of extended timeframes resulting from several components of this proposed rulemaking, including the requirement for a 5-year phase-in of changes in use of more than 10%, the requirement for monitoring prior to making a determination on rangeland health, and the extension of time allowed to develop and implement management actions after a determination that livestock grazing is a significant factor in failing to meet rangeland health standards or to conform with the guidelines. However, better and more sustainable grazing decisions would be the outcome of using monitoring data and taking the time to ensure complete communication, consultation and coordination with permittees or lessees and interested public, and completing other administrative obligations. The resulting grazing decisions would be sustainable and result in long-term positive effects on rangeland health. To minimize the potential for short-term adverse effects, the BLM could exercise authority under 43 CFR 4110.3-3(b) to curtail grazing if imminent likelihood of significant resource damage exists. Mitigation measures would be appropriately developed when site-specific NEPA documents are prepared to implement the regulatory provisions.

The effects of each alternative are summarized and compared across alternatives in Table ES-2 "Comparison of Impacts Across the Alternatives."

Consultation and Coordination

Coordination With Federally Recognized Tribes

A letter has been sent to all tribal chairpersons for Federally recognized tribes west of the Mississippi River initiating consultation in accordance with the National Environmental Policy Act, the National Historic Preservation Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, and Executive Order 13007 to ensure that any concerns they have will be fully considered. The letter included a copy of the Draft EIS for their review, and requests comments to be submitted during the 60-day public comment period.

Consultation With Fish and Wildlife Service and National Marine Fisheries Service

During the review of the Draft EIS, the BLM will consult informally with the Fish and

Wildlife Service and National Marine Fisheries Service under Section 7 of the Endangered Species Act.

Consultation With the Advisory Council on Historic Preservation

Section 106 of the National Historic Preservation Act requires Federal Agencies to take into account the effects of their undertakings on historic properties. The agency has sent a letter to the Advisory Council on Historic Preservation notifying them of the proposed regulation changes. The letter provides a brief synopsis of the goals and objectives of the regulations changes and information on where to find the current regulations for their review. The Draft EIS has been sent to them for their review.

Public Participation and Final Rulemaking—EIS Process

Publication of the Environmental Protection Agency (EPA) Notice of Availability (NOA) of the DEIS in the *Federal Register* initiates a 60-day review period for the public to comment on the proposed revisions to the regulations and this DEIS. During this time, the BLM will conduct additional public meetings to collect feedback on the proposed rulemaking and environmental analysis.

After careful consideration of all comments on the Draft EIS and Proposed Rulemaking, the BLM will incorporate any necessary changes into a Final EIS and Final Rulemaking. The Notice of Availability (NOA) for the Final EIS will then be published in the *Federal Register*. Thirty days after publication of the Final EIS, the BLM will issue a Record of Decision in the form of a Final Rulemaking that sets forth the BLM's final decision. The Final Rulemaking will become effective 60 days after publication. The regulations will become part of the Code of Federal Regulations.

**Table ES-1 Proposed Revisions to Grazing Regulations for the Public Lands
Comparison of Alternatives**

Improving Working Relationship with Permittees and Lessees			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Social, Economic and Cultural Considerations in the Decision-Making Process	* No provisions specifically address NEPA documentation of social, economic and cultural considerations in the regulations regarding changes in permitted use.	* A new provision would be added stating that before changing grazing preference, BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic and cultural effects of the proposed action.	* Same as Proposed Action
Implementation of Changes in Grazing Use	* The current regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	* Same as proposed action, except that the 5-year phase in of changes in use would be discretionary , i.e., change in active use in excess of 10% may be implemented over a 5-year period.
Range Improvement Ownership	* Under the current regulations, the United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	* Same as Proposed Action
Cooperation with State, Local, and County Established Grazing Boards	* Under current regulations, BLM is required to cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including State cattle and sheep sanitary or brand boards and County or other weed control districts.	* Under the proposed regulations, a requirement is added for the BLM to cooperate with State, local, or county established grazing boards in reviewing range improvements and allotment management plans on public lands.	* Same as Proposed Action

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Review of Biological Assessments and Evaluations	* Current rules do not specifically mention biological assessments or evaluations, however the current regulations require that BLM, to the extent practicable, provide affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease. This provision has been interpreted to include biological assessments.	* Biological assessments and biological evaluations prepared under the Endangered Species Act are specifically identified as reports that BLM would, to the extent practical, provide affected permittees or lessees, the state having lands or responsibility for managing resources within the area, and the interested public an opportunity to review and provide input during their preparation.	* Same as Proposed Action
Protecting the Health of the Rangelands			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Temporary Nonuse	* Grazing permittees or lessees may submit and BLM may approve an annual application for temporary non-use for no more than three (3) consecutive years. Reasons for temporary non-use include financial conditions or annual fluctuations of livestock.	* Grazing permittees or lessees could submit and BLM could approve non-use for no longer than one year at a time for resource reasons as well as for business/personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of non-use allowed).	* Same as Proposed Action except that permittees or lessees could submit and BLM could annually approve an application for nonuse for no more than five consecutive years.
Basis for Rangeland Health Determinations	* The current regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	* Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	* Same as proposed action except that BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment and/or monitoring.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Timeframe for Taking Action to Meet Rangeland Health Standards	* Under current regulations, the BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health	* Under the proposed regulations, where standards and guidelines have not been established , BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health.	* Same as Proposed Action.
	* Current regulations state that upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement or documented decision, the BLM would implement appropriate action(s) as soon as practicable but not later than start of next grazing year.	* Same as Proposed Action.

Increasing Administrative Efficiency and Effectiveness			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Conservation Use	*Under the current regulations, conservation use is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary's authority under the Taylor Grazing Act.	* All references to and provisions on conservation use would be deleted.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition of Grazing Preference, Permitted Use, and Active Use	* In the current regulations, <u>grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.	* <u>Grazing preference or preference</u> would mean the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease.	* Same as Proposed Action.
	* In the current regulations, <u>permitted use</u> is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.	* The term <u>permitted use</u> would be dropped from the regulations and replaced with the term grazing preference, preference or active use , depending upon the context, throughout the regulations.	* Same as Proposed Action.
	* In the current regulations, <u>active use</u> means current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or a portion of an allotment.	* <u>Active use</u> would be redefined to mean that portion of the current authorized use which is available for livestock grazing based on rangeland carrying capacity and resource conditions in an allotment under a permit or lease and which is not in suspension.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public	* Under the current regulations, <u>interested public</u> is defined as an individual, groups or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.	* <u>Interested public</u> would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a decision for management of livestock grazing and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment , as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.	* Same as Proposed Action.
	* The BLM is required to consult, cooperate and coordinate with interested public on the following: • Designating/adjusting allotment boundaries. • Apportioning additional forage • Reducing permitted use • Emergency closures or modifications • Development or modification of grazing activity plan. • Planning of the range development or improvement program • Renewing/issuing grazing permit/lease • Modifying a permit/lease • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits.	* Requirements to consult, cooperate and coordinate with the interested public would be modified as follows: • Removed • Retained • Removed • Removed • Retained • Retained • Removed • Removed • Retained/Modified (added review on biological assessments/evaluations; removed specific reference to comment opportunity) • Removed	* Same as Proposed Action.
	* Under the current regulations, BLM is required to send copies of proposed and final decisions to the interested public.	* Same as existing regulations.	* Same as existing regulations.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Water Rights	* Current regulations state that any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	* The phrase – “on or after 8/21/95” - would be dropped from the first sentence. The second sentence of this provision - stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States - would be removed.	* Same as Proposed Action.
Satisfactory Performance of Permittee or Lessee	* Current regulations identify requirements for satisfactory performance for renewal of permits and leases and for new permits or leases.	* The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for new applicants – basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Changes in Grazing use Within Terms and Conditions of Permit or Lease	* The current regulations state that changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	* The proposed regulations would provide that BLM may authorize temporary changes in grazing within the terms and conditions of a permit or lease to respond to annual fluctuations in timing and amount of forage production; or to meet locally established range readiness criteria.	* Same as Proposed Action.
	* The current regulations do not include consultation requirements for such changes	*The BLM would consult with the permittee or lessee on such changes.	* Same as Proposed Action.
	* The current regulations do not define what is meant by “within terms and conditions of the permit or lease”.	* “Within terms & conditions” would be defined to mean temporary changes to livestock number, period of use, or both that would result in grazing use that results in forage removal that does not exceed the amount of active use specified in the permit or lease; and occurs either no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Service Charges	* A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement/supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the current regulations, however the current fee for these actions is \$10.	* Service charges would be specified as follows: Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50	* Same as Proposed Action.
Prohibited Acts	* There are 3 categories of acts which are prohibited on public lands.	* Same as existing regulations	* Same as existing regulations.
	* The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	* Same as existing regulations with several minor editorial changes and clarifications.	* Same as Proposed Action.
	* The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	* Same as existing regulations with some minor editorial changes.	* Same as the Proposed Action plus the following prohibited act would be added to this section: "Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer."
	* The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	* Under the proposed regulation, the performance of prohibited acts in this third category would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	* Same as Proposed Action.
	* The third category consists of 3 sets of prohibited acts including: • specific laws or regulations (e.g., Endangered Species Act) • Federal or State laws	* Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: • specific laws or regulations (e.g., End. Species Act) • Federal or State laws

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
	pertaining to natural/ environmental/ cultural resources State laws related to livestock operations		pertaining to natural/ environmental/ cultural resources - deleted State laws related to livestock operations.
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	Under the current regulations, if a decision is stayed, the permittee or lessee will graze in accordance with the authorization issued the previous year. If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.	The provisions would be moved and editorial changes would be made to clarify these requirements. In addition, a provision would be added addressing the stay of a decision on a permit or lease offered to a preference transferee. If a stay is granted on a decision to modify or renew a permit or lease or to offer a permit or lease to a preference transferee, then the immediately preceding authorization would not expire, and grazing would continue under the immediately preceding authorization with the same terms and conditions therein.	* Same as Proposed Action.
Treatment of Biological Assessments & Evaluations in the Grazing Decision- Making Process	* Current regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA Blake decision, biological assessments are to be treated as decisions subject to protest and appeal.	* In the proposed regulations it would be stated that a biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal.	* Same as Proposed Action.

Table ES-2 - Comparison of the Impacts Across Alternatives

Alternative 1	Alternative 2	Alternative 3
<i>Grazing Administration</i>		
*BLM grazing management would provide some partnership opportunities. *Mechanisms for assessing standards and changing grazing management would be rushed, discourage partnerships, and produce decisions of inconsistent quality. *Inconsistent documentation and consideration of social, economic and cultural effects of grazing decisions.	*BLM would promote greater partnership with grazing permittees, lessees, and grazing advisory boards. *Additional time would be allocated for developing appropriate action following a rangeland health determination. This would delay on-the-ground action but would lead to better, more comprehensive and acceptable decisions and would improve partnerships. *Additional consideration would be given to social, economic, and cultural impacts. *Monitoring data would support partnerships and sustainable decisions.	*Similar to Alternative 2 but with additional flexibility at the local level.
<i>Vegetation</i>		
*Vegetative cover would increase slowly. *Timelines for management changes may limit vegetation management alternatives and partnerships. *Riparian vegetation would remain static or improve slightly.	*Vegetative conditions would move toward achievement of management objectives. *Potential for short-term adverse effects where vegetative recovery is delayed. *Additional resources would be invested in improvements due to partnerships and improved working relationships. *Riparian vegetation would remain static or improve slightly.	*Similar to Alternative 2 but flexibility in standards assessments and management implementation schedules would allow focus on high priority allotments and accelerate short-term vegetative recovery. *Slower weed expansion rates than Alt. 1 or 2.
<i>Fire and Fuels</i>		
*A minimal effect on the ability to reach a more historical fire regime.	*A slight improvement in the ability to reestablish historical fire regimes resulting in vegetation improvements.	*Similar to Alternative 2.

<i>Soils</i>		
*Short-term adverse impacts would be minimal except at the local scale. *Would result in maintenance of or slight improvement in conditions in the long term.	*Short-term adverse impacts would be minimal except at the local scale. *Maintenance or slight improvement would be expected in the long-term due to watershed cover.	*Similar to Alternative 2.
<i>Water Resources</i>		
*The proposed changes would have little or no impact on short-term water resource conditions. *Slow improvement in watershed conditions would be expected for the long term. *Water quality would remain static or improve slowly.	*Similar to Alternative 1.	*Similar to Alternative 1 except the increase in weeds will be slower than Alternative 1.
<i>Air Quality</i>		
*Air quality would be expected to be maintained or improved and within standards.	*Similar to Alternative 1.	*Similar to Alternative 1.
<i>Wildlife</i>		
*Wildlife populations and habitat would remain static or improve slightly as habitat improvements are implemented. *Current timeframes for developing grazing management changes would impede adequate analysis and consultation, thus resulting in less effective and acceptable decisions on wildlife.	*In the long run, there would be a slight beneficial or no effect on wildlife due to better partnerships with permittees and lessees and longer timeframes for developing effective and acceptable decisions. *Implementation of changes in grazing use and timeframes for taking action could have an adverse effect on wildlife in the short-term. *The elimination of the 3 consecutive year limit on temporary non-use could improve opportunities for cooperation to benefit wildlife resources.	*Changes in temporary non-use over current regulations from 3 to 5 consecutive years would slightly benefit wildlife. *More discretion for BLM managers in phasing in implementation of changes in grazing use would be beneficial to wildlife. * More discretion for BLM managers on the data to use for making rangeland health determinations could be beneficial to wildlife resources. *Reduction in spread of weeds would enhance wildlife habitat.
<i>Special Status Species</i>		
*Slight positive or no effect on special status species. *Effects similar to wildlife in Alternative 1.	*Slight positive or no effect on special status species. *Effects similar to wildlife effects in Alternative 2	*Similar to wildlife effects in Alternative 3.

<i>Wild Horses and Burros</i>		
*Little change in wild horse and burro populations on public lands.	*Slight long-term positive impact from improved condition of the vegetation on habitat areas through an improved decision making process.	*Similar to Alternative 2.
<i>Recreation</i>		
*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved.	*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved. *Effects could be adverse in the short term if corrective actions are delayed.	*Similar impacts to alternative 2. *The reduction of weed expansion would have an additional benefit to recreation interests.
<i>Special Areas</i>		
*Little impact due to current good conditions.	*Little impact due to existing good conditions.	*Slight improvement of conditions on the long term due to reduction of weed expansion.
<i>Paleontological and Cultural Resources</i>		
*Heritage resources are protected through case-by-case, site specific surveys and analysis. *Prohibited act regarding removal or destruction of cultural resources may act as a deterrent.	*There would be little to no effect on heritage resources. *New on-the-ground projects would be analyzed on a case-by-case basis.	*Similar to Alternative 2 except removal of cultural damage prohibited act may have slight adverse impact.
<i>Economic Conditions</i>		
*Local/regional economic effects would be minor. *On-going effects include: 1) low flexibility; 2) lack of incentive to participate in range improvements; 3) lack of time to implement land health determinations; and 4) lack of cost recovery.	*Local/regional economic effects would be minor. *Primary effects would be: 1) Increased flexibility; 2) Increased BLM costs; 3) reduced adverse impacts on ranchers from herd reductions; 4) increased service charges for ranchers and increased cost recovery for BLM.	*Similar to Alternative 2. *Greater discretion for BLM managers in implementing changes in use and using monitoring data for land health determinations could have an adverse economic impact on ranchers.

<i>Social Conditions</i>		
Ranchers would continue to face increasing stress related to public land grazing. Ranchers would continue to sell ranches for amenity reasons and subdivision.	*Ranching, environmental and recreation interests perceive the monitoring requirements as being positive and believe this provision would provide beneficial social impacts. *Ranchers would experience beneficial social effects as a result of most provisions – particularly phasing in of implementation of changes, required cooperation with grazing boards, focusing water rights provision on following state law and providing more time for developing appropriate action following rangeland health determination. *Ranchers would experience negative social effects from the removal of the limit on consecutive years of nonuse – they perceive this as a form of conservation use and a threat to the economic and social viability of their communities. *Environmental groups would experience adverse social effects from the water rights provision change. *Social effects on environmental interest and recreation interests would generally be minimal or neutral for most of the other proposed revisions.	*There could be minimal social effects on ranchers and conservation groups due to BLM having discretion to use monitoring for rangeland health determinations. *Elimination of certain prohibited acts would have an adverse effect on conservation, environmental and recreation groups.
<i>Environmental Justice</i>		
*No disproportionate effects on low-income, minority, or tribal populations as a result of present regulations.	*Would not result in violation of environmental justice principles.	*Would not result in violation of environmental justice principles.

Draft EIS - Chapter 1

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1.0 INTRODUCTION

In this Draft Environmental Impact Statement (DEIS), the Bureau of Land Management (BLM) considers the effects of a proposed rulemaking to revise the regulations governing livestock grazing on public lands. The BLM, and all Federal agencies, are required by the National Environmental Policy Act (NEPA) to prepare an EIS if a proposed action has effects that are expected to be significant and that are not fully covered in an existing EIS. Because there appeared to be substantial controversy regarding the degree to which the proposed regulations effect the human environment, the BLM determined that an environmental impact statement was required.

Chapter 1 of this DEIS contains background information on the livestock grazing program, a discussion of the purpose and need for the regulatory revisions, and a brief summary of the scoping process and results.

1.1 BACKGROUND

A brief summary of the livestock grazing program, including laws, regulations and program operations, is presented below. This information is provided to assist the reader in understanding the context of the proposed revisions to the regulations.

1.1.1 Laws Governing the BLM Grazing Program

The primary laws that govern grazing on public land are The Taylor Grazing Act (TGA) of 1934, The Federal Land Policy and Management Act (FLPMA) of 1976, and The Public Rangelands Improvement Act (PRIA) of 1978.

These laws mandate managing uses of and resources on public land in a way that maintains or improves its condition. The TGA directs that occupation and use of the range be regulated to preserve the land and its resources from destruction or unnecessary injury, and to provide for the orderly use, improvement, and development of the range. The FLPMA provides authority and direction for managing the public lands on the basis of multiple use and sustained yield and mandates land use planning principles and procedures for the public lands. The PRIA defines rangelands as public lands on which there is domestic livestock grazing or which are determined to be suitable for livestock grazing, establishes a national policy to improve the condition of public rangelands so they will become as productive as feasible for all rangeland values, requires a national inventory of public rangeland conditions and trends, and authorizes funding for range improvement projects.

1.1.2 Grazing Regulations

The BLM administers its grazing program under 43 CFR 4100 of the Code of Federal Regulations (CFR). The regulations carry out the laws enacted by Congress.

Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act in 1934, they have been periodically amended and updated. The last major revision was called Rangeland Reform. Rangeland Reform was proposed in partnership with the Forest Service in the U.S. Department of Agriculture. The broad purpose of Rangeland Reform was to improve ecological conditions while allowing for sustainable development. Changes made to

the grazing rules in 1995 included the following:

1. Revised the term "grazing preference" to mean a priority position against other applicants for receiving a grazing permit, rather than a specified amount of public land forage apportioned and attached to a base property owned or controlled by a permittee or lessee, and added the term "permitted use" to describe forage use amounts authorized by grazing permits or leases;
2. Removed the requirement that one must be engaged in the livestock business to qualify for grazing use on public lands;
3. Required applicants for a new or renewed grazing permit to have a satisfactory record of performance;
4. Provided that BLM could issue a conservation use permit to authorize permittees not to graze their permitted allotments;
5. Limited authorized temporary nonuse to 3 years;
6. Required grazing fee surcharges for permittees who do not own the cattle that graze under their permits;
7. Provided that the United States hold 100% of the vested title to permanent range improvements, constructed under cooperative agreements, rather than proportionately sharing title with the cooperators;
8. Required livestock operators and the BLM to use cooperative agreements to authorize new permanent water developments, instead of allowing some water developments to be authorized under range improvement permits;
9. Provided that after August 21, 1995, the United States, if allowed by State water laws, would acquire livestock water rights on public lands;
10. Authorized BLM to approve nonmonetary settlement of nonwillful grazing trespass under certain circumstances;
11. Expanded the list of prohibited acts applicable to grazing activities;
12. Established Fundamentals of Rangeland Health; and
13. Created a process for developing and applying state or regional standards for land health and guidelines for livestock grazing as a yardstick for grazing management performance.

In addition, revisions were made to BLM's regulations at 43 CFR Subpart 1784 on Advisory Committees to establish Resource Advisory Councils (RACs) to allow for increased public participation in and advice to BLM resource management programs. The RACs replaced the BLM grazing advisory boards and district advisory councils, and were set up to represent diverse interests and employ consensus decision making.

Policy and procedural guidance on how to implement the regulations is provided in BLM manuals and handbooks.

1.1.3 Land Use Plans

Under FLPMA, public land must be managed pursuant to land use plans using multiple use and sustained yield concepts and a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences. Additionally, the public land must be managed to recognize the nation's need for domestic sources of minerals, food, timber, and fiber. FLPMA requires that land use plans be prepared to achieve these and other statutory objectives.

Land use plans are designed to set goals for land use and future conditions that BLM and others believe are desirable. The Bureau of Land Management's land use plans provide the basis for every action and approved use that takes place on land the agency manages, and are created with the help of interested individuals and groups from the public and government. Each BLM Field Office is required to be covered by a land use plan and grazing is a resource use where appropriate.

On the basis of present planning guidance, livestock grazing decisions found in land use plans include the identification of lands available or not available for livestock grazing; for those lands available for grazing, identification on an areawide basis of both existing permitted use and future anticipated permitted use with full implementation of the land use plan while maintaining a thriving ecological balance and multiple-use relations; and identification of guidelines and criteria for future allotment-specific adjustments in permitted use, season of use, or other grazing management practices. Standards for rangeland health and guidelines for grazing administration are also incorporated into land use plans.

FLPMA requires that the public be involved in the development of land use plans. Public participation and collaboration are encouraged throughout the planning process. NEPA also sets forth as policy that Federal agencies shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment. One of the primary functions of NEPA is to disclose to the public the effects on the human environment of proposed actions and alternatives. The BLM uses a process to create or update land use plans that is fully integrated and consistent with the NEPA process and Council on Environmental Quality regulations.

1.1.4 Overview of the Livestock Grazing Program

All allowable uses on BLM lands, such as grazing, are described in land use plans. These plans now provide for about 160 million acres (see Figure 1.1) in the West as available for livestock grazing. The instrument that authorizes grazing use is called a grazing permit or lease. A BLM grazing permit or lease authorizes a permittee (or lessee) to graze livestock on one or more grazing administrative units called allotments. Permittees or lessees can be individual citizens or business entities such as corporations, associations, and partnerships.

Allotments range in size from small (1,000 acres or fewer) to vast (more than a million acres).

The Taylor Grazing Act of 1934 (TGA) mandates the government to determine, for the western public lands, how much forage is available for livestock grazing, who should get the grazing permits, and how grazing is to occur. The TGA provides that preference for a permit shall be given in the issuance of grazing permits to nearby landowners engaged in the livestock business, settlers, those who owned water or water rights, and other stockowners as necessary to permit the proper use of the privately owned land or water. The TGA also provides that recognized and acknowledged grazing privileges shall be adequately safeguarded, so far as consistent with the purposes of the TGA. Once this system was established, Congress intended that the grazing privilege was to be safeguarded as long as it comported with sound land management practices. Where FLPMA land use planning has determined that grazing continues to be an appropriate use of the land, permittees who comply with their permits and other applicable rules and regulations receive first priority for renewal of their expiring permits.

The government developed a system for keeping records regarding who has priority for grazing privileges on public land. Those who made application and were approved during the establishment of grazing privileges during the priority years following passage of the TGA

offered land or water as base property to which grazing preference was attached. Once approved, whoever owns or controls base property has priority or "preference" and is granted the permitted grazing use. This system also allows for preference to be transferred from one property to another, or from one person to another.

The amount of forage that a permittee may graze on an allotment each year is called "active use" and the lessee or permittee is obligated to graze livestock at this level unless resource conditions or other considerations warrant taking nonuse. When the owner or lessee of a base property applies for grazing use, he or she is issued a permit or lease that specifies which allotment(s) are to be used, the number of livestock to be allowed, when they can graze, and other management terms and conditions. In some instances, there is an "Allotment Management Plan" (AMP) that describes in detail how grazing is to occur on a specific allotment, and these plans become part of the grazing permit or lease.

Sometimes operators do not wish to graze all of the active use allowed by their permits or leases. When this happens, BLM can approve nonuse to help conserve resources or for other reasons specified by the permittee or lessee, including financial reasons. In some instances, BLM may temporarily authorize another operator to make grazing use through a nonrenewable permit if the nonuse is not for resource conservation reasons. In a good growth year, forage is temporarily available on the range that exceeds the amount of use permitted. When this happens, BLM may temporarily authorize grazing use that exceeds the established level of permitted use.

The BLM may allow operators to graze livestock owned by another entity on their permitted allotments. When this happens, they must submit a livestock control agreement to BLM and pay an extra fee called a surcharge.

The BLM may cancel a permit or lease and the preference for the permitted use that was attached to the base property for grazing rules violations. This happens in few instances, but when it does, BLM may award the forage to a new applicant.

Permits or leases may be modified as a result of, among other things, implementation of the rangeland health standards and guidelines process in which data (i.e., vegetation, watershed, wildlife, and others) are collected and analyzed by a BLM interdisciplinary team. The team also considers any other resource and land use plan issues and provides an evaluation report to the BLM authorized officer. The authorized officer then determines if an allotment has met the standards for rangeland health, and if not, identifies the significant causal factors for not meeting the standards.

Upon determining that existing grazing management practices or levels of grazing use are significant factors in failure to achieve the rangeland health standards and conform to the guidelines, the BLM has until the next grazing season to implement actions that will result in significant progress toward meeting them. Actions to be implemented must be analyzed through the NEPA process, which normally requires an environmental assessment. After undergoing the NEPA process, the actions are incorporated into the new grazing permit or lease and then the permit or lease is issued. Whether an allotment does or does not meet a standard for rangeland health, the effects of issuing a permit or lease are appropriately analyzed under the NEPA.

Another tool for maintaining or improving land conditions is to install rangeland improvement projects, such as water pipelines, reservoirs, or fences.

In 2002, grazing operators held 18,142 BLM grazing permits and leases. These permits and leases allowed for as many as 12.7 million Animal Unit Months (AUMs) of grazing use, with 7.9 million AUMs authorized as active use and 4.8 million AUMs authorized as temporary nonuse or conservation use. In 2003, AUM usage declined to 6.9 million. This decline was the result of decreased forage growth due to extended drought, fire, and other factors. This

decrease in forage resulted in ranchers reducing their herds and using less AUMs than allowed under grazing permits and leases.

1.2 THE PURPOSE OF AND NEED FOR THE PROPOSED ACTION

The overall purpose and need for revising the regulations, as well as the purpose and need for revising specific elements of the regulations, are described in this section.

1.2.1 General Purpose and Need

Revisions to the grazing regulations are needed to advance our goal of using cooperation as a means of achieving BLM's rangeland management objectives. The regulatory revisions are intended to improve working relations with permittees and lessees, to protect the health of the rangelands, and to increase administrative efficiency and effectiveness, including resolution of legal issues.

The BLM is committed to making changes to reflect the Secretary of the Interior's "4 C's" philosophy of "consultation, cooperation, and communication all in the service of conservation" and to provide for economically viable ranching operations and rangeland health.

The regulatory changes are narrow in scope, make no changes in grazing fees or the substance of the fundamentals of rangeland health or the standards and guidelines for grazing administration, and otherwise leave the majority of the 1995 regulatory changes in place. The changes that are proposed are driven by specific issues and concerns that have come to BLM's attention through experience with the current regulations and from public comments provided to the BLM.

1.2.2 Purpose and Need by Topic

The following major issues drive the proposed rulemaking and this EIS and the present problem or need that BLM intends to address. As stated before, these issues came to the fore as areas where the BLM could improve working relations with permittees and lessees, protect the health of the rangelands, and increase administrative efficiency and effectiveness, including resolution of legal issues.

The major areas of focus under these issues are:

Improving Working Relations with Permittees and Lessees

- Social, Economic, and Cultural Considerations in the Decision-Making Process
- Implementation of Changes in Grazing Use
- Range Improvement Ownership
- Cooperation with State, Local, and County Established Grazing Boards
- Review of Biological Assessments and Biological Evaluations

Protecting the Health of the Rangelands

- Temporary Nonuse
- Basis for Rangeland Health Determinations

- Timeframe for Taking Action to Meet Rangeland Health Standards

Increasing Administrative Efficiency and Effectiveness, Including Resolution of Legal Issues

- Conservation Use
- Definition of Grazing Preference, Permitted Use, and Active Use
- Definition and Role of Interested Public
- Water Rights
- Satisfactory Performance of Permittee or Lessee
- Changes in Grazing Use Within the Terms and Conditions of Permit or Lease
- Service Charges
- Prohibited Acts
- Grazing Use Pending Resolution of Appeals when Decision has been Stayed
- Treatment of Biological Assessments and Biological Evaluations in the Grazing Decision-Making Process

1.2.2.1 Social, Economic, and Cultural Considerations

NEPA and its implementing regulations require that all Federal agencies use qualified specialists from the various physical and social science disciplines to perform analyses, such as environmental assessments, under this law. In addition to assessing effects on various environmental elements such as vegetation, wildlife, and water quality, the law and NEPA regulations require the BLM to assess effects on economic, social, and cultural environments. No specific reference to these elements exists in the present BLM grazing regulations. The degree and nature of documentation of social, economic and cultural factors in NEPA documents varies across the BLM. The question remains whether BLM should change its grazing regulations to include language concerning the analysis of economic, social, and cultural effects, thereby enhancing consistency and clarity. Many grazing operators believe that these factors are not adequately considered by BLM and that they should always be part of the written analysis in NEPA documents. This issue is addressed in this DEIS.

1.2.2.2 Implementation of Changes in Grazing Use

When BLM implements substantial changes in a permittee's active use, this is sometimes done within a timeframe that causes sudden adverse economic effects, affects the ability to make operational adjustments such as pasture rotations, or does not allow enough time for herd size changes. In these instances, the opportunity to monitor and adjust based on increments of change is also foregone. Before the 1995 Rangeland Reform changes, there was a 5-year phase-in period in the regulations for the implementation of such changes. To address concerns about this issue, consideration is given in the Proposed Rule and DEIS to the implementation of changes in active use within a timeframe that allows such changes to be absorbed without an unreasonably negative effect on a permittee.

1.2.2.3 Range Improvement Ownership

The regulations that went into effect in 1995 provided that title to new permanent range improvements developed under a cooperative range improvement agreement would be held by the United States government, even if a grazing user funded or built them. This change was meant to conform with the common law concept that title to permanent improvements should go to the landowner, which in this case is the Federal government. This change was also implemented to conform to the practice of the Forest Service and to BLM's own practice before rule changes took place in the early 1980s. However, many grazing operators have said that having range improvements jointly owned by the Federal government and the operator contributes to healthy range conditions and allows them to more easily obtain loans for their operations. They have also said that joint ownership would offer an incentive for operators to construct improvements, and that the present situation leaves them with little incentive to invest in improvements if they can't claim the value of their contribution as part of their ranching operation. Grazing users believe that, under present regulations, the fact that range improvements are entirely owned by the Federal government does not adequately reflect their role in purchasing and/or installing those improvements. Consideration of shared ownership of range improvements is, therefore, an issue addressed in this Proposed Rule and DEIS.

1.2.2.4 Cooperation with State, Local, and County Established Grazing Boards

The present grazing regulations provide that the BLM will cooperate with other agencies and units of government that have responsibilities for grazing on public lands, and specifically state that the BLM will "cooperate with State, County, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including (a) State cattle and sheep sanitary or brand boards...and (b) County or other local weed control districts...."

Many western States have State, county, or locally established grazing advisory boards that provide guidance on range improvements on public lands. Section 401 (b)(1) of FLPMA states that a portion of the grazing fees collected are set aside for range betterment. After BLM consults with the local user representatives, half the fee amount is to be used in the area where the fees were collected for range rehabilitation, protection, and improvements. There is no specific provision, however, in the present regulations that requires BLM to cooperate with State, county, or locally established grazing advisory boards.

Grazing interests and State and local governments have raised concerns that the grazing advisory boards have not been used effectively by the BLM and are underutilized as a tool for gathering local input for BLM decisions on range improvements and allotment management planning. For these reasons, the BLM is addressing the issue of cooperation with such grazing boards, where they exist, in this Proposed Rule and DEIS.

1.2.2.5 Review of Biological Assessments and Evaluations

Under the current regulations, the BLM must provide the permittee, the pertinent State, and the interested public an opportunity to review reports that are used to support decisions for making changes in grazing use. However, the present regulations do not specifically address the review of biological assessments or biological evaluations, which are prepared to comply with the consultation requirements of the Endangered Species Act.

A biological evaluation (BE) provides a detailed review of programs or activities to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed designated critical habitat. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, the BE provides the basis of evaluation during informal consultation. A biological assessment (BA) is prepared to determine whether a proposed action is likely to: (1) adversely affect listed species or

designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify critical habitat. BAs must also be prepared for "major construction activities" per 50 CFR §402.2. The BA's conclusion determines whether a formal consultation or conference is necessary. The FWS and/or NOAA Fisheries must concur with the BA before formal consultation can begin.

When biological assessments or biological evaluations are included within the body of information that is used to support modification of grazing permits, the BLM is required to make these assessments available for comment and review by the affected permittees and lessees, the interested public, and State agency staff. However, BLM has not been consistent in making these assessments or evaluations available. Therefore, a solution is needed to ensure more consistent application of opportunities for public review of biological assessments and biological evaluations based on the nature and purpose of the document. Clarification of this requirement is, therefore, addressed in the Proposed Rule and DEIS.

1.2.2.6 Temporary Nonuse

Before the 1995 regulatory changes a permittee could apply to not use all or a portion of their active grazing use for purposes of conservation and protection of the public lands, due to annual fluctuations of livestock operations, for financial or other reasons beyond control of the operator, or due to livestock disease or quarantine. There was no restriction on the number of consecutive years a permittee or lessee could apply for nonuse. Such nonuse could be approved each year during the permit if need be.

The 1995 regulations re-characterized BLM's pre-1995 authority to approve nonuse for reasons of conservation and protection of the public lands as approving "Conservation Use." The 1995 regulations provide that a permittee or lessee may apply to not use all or a part of the use authorized by their permit for purposes including but *not limited to* personal or business reasons (i.e. nonuse for conservation and protection is also allowed by the current regulations), but BLM may only approve such nonuse for three consecutive years. The current regulations provide that if a permittee or lessee wishes to take nonuse for longer than three consecutive years for purposes of resource conservation or protection, then BLM could issue them a "Conservation Use" grazing permit. However, a 1999 ruling by the 10th Circuit Court determined that BLM did not have the authority to issue "Conservation Use" permits. As a result, even if the operator wishes to apply for nonuse for conservation and protection of the public lands for longer than three consecutive years, and BLM believes that the resource would benefit and would like to approve the nonuse, BLM is prevented by its current rules from approving it. BLM always has the ability to suspend grazing use to protect resources. However, when both parties agree that nonuse would benefit the resources, it is more efficient and conducive to a climate of cooperation for BLM to approve an operator application for nonuse than to suspend grazing use using BLM's grazing decision process.

Therefore, to promote greater flexibility and enhanced opportunity for cooperation and coordination with the permittee and lessee, the BLM needs to consider changes in the regulations to provide a mechanism to allow longer periods of nonuse as needed to ensure the health of the rangelands. Consideration of allowing BLM to approve applications for nonuse each year is, therefore, addressed in the Proposed Rule and DEIS.

1.2.2.7 Basis for Rangeland Health Determinations

The present regulations do not identify what data or information is to be used by the BLM to determine that existing grazing management practices or levels of grazing use on public land are significant factors in failing to achieve the rangeland health standards and conform with the guidelines for grazing administration.

The BLM has issued detailed policy and procedural guidance to the field in Manual Section 4180 and Handbook H-4180-1, Rangeland Health Standards, on how to evaluate rangeland health standards, make determinations, and develop and implement plans to address appropriate actions for achieving or progressing toward achievement of standards or fundamentals of rangeland health conditions. The guidance addresses how to conduct an evaluation and assessment and identifies monitoring data as an important source of information in conducting the evaluation. Where data is not available or not adequate for making the determination, it is recommended that the manager initiate action necessary to gather the information needed to complete the evaluation.

Members of the public, in scoping and ongoing communications with the BLM, have expressed a strong interest in BLM's monitoring program and, particularly, in ensuring that adequate and sufficient monitoring data are available to support our decisions and determinations. Concerns have been raised about the validity and credibility of basing a determination on a one-time assessment. Multiyear monitoring data are considered by some members of the public as a minimum requirement for making determinations. Consideration of requirements for both assessments and monitoring data as a basis for rangeland health determinations is, therefore, addressed in this Proposed Rule and DEIS.

1.2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards

The 1995 regulations established the fundamentals of rangeland health and called for BLM to establish, within geographic regions and in consultation with Resource Advisory Councils, standards and guidelines for grazing administration. Fallback standards and guidelines were also identified to be used in the event that regional standards and guidelines were not established by a specified date. Most BLM States have completed development of regional standards and guidelines.

Under the regulations BLM is required to take appropriate action, as soon as practicable but not later than the start of the next grazing year, upon determining that existing grazing management needs to be modified to ensure that the fundamentals are being met or that existing grazing management practices or levels of use on public lands are significant factors in failing to achieve the standards and conform with the guidelines.

This timeframe has proven to be too short in many instances, especially given that NEPA and other environmental laws such as the Endangered Species Act Section 7 consultation where applicable and the Archeological Resources Protection Act Section 106 clearance, must be satisfied before a decision is made on the "appropriate action." In addition, the BLM must satisfy consultation, cooperation, and coordination requirements before identifying the proposed action. The mandate that the proposed appropriate action be developed and implemented before the start of the next grazing year has often created unreasonable timeframes. For this reason, therefore, consideration is given in the Proposed Rule and DEIS to providing a reasonable timeframe to develop an appropriate action or plan after a determination has been made.

1.2.2.9 Conservation Use

The 1995 regulations authorized the BLM to issue "Conservation Use" permits to groups or individuals for an activity, excluding livestock grazing, for the purposes of protecting the land from destruction or unnecessary injury, improving rangeland conditions, or enhancing resource values, uses, or functions. The authority for BLM to issue conservation use permits was challenged in court, with the result that in 1999 the Tenth Circuit Court of Appeals held that the Taylor Grazing Act stipulated that the primary purpose of issuing a grazing permit is to permit grazing and that BLM could not issue permits exclusively for conservation purposes (Public Lands Council v. Babbitt, 167 F.3d 1287, 1308 (10th Cir. 1999), aff'd on other

grounds, 529 U.S. 728 (2000)). This decision was not appealed to the Supreme Court and thus is the final judicial determination on this issue. The present regulations do not conform with the court's finding. The removal from the BLM grazing regulations of all references to conservation use and conservation use permits is, therefore, addressed in this Proposed Rule and DEIS.

1.2.2.10 Definition of Preference, Permitted Use, and Active Use

"Grazing preference" has been defined since 1995 as a priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee. Before 1995, grazing preference was defined as the total number of animal unit months (AUMs) of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee.

"Permitted use" was introduced as a term in the 1995 regulations revisions to define an amount of forage allocated by a land use plan for livestock grazing in an allotment. It is expressed in AUMs and includes "active use" and "suspended use." Thus, in 1995, the term "permitted use" replaced the term "grazing preference" in describing the quantity of forage allocated.

Since 1995, "active use" has meant "current authorized use including livestock grazing and conservation use." The BLM must remove conservation use from the definition because of the 1999 10th Circuit Court decision in *Public Lands Council v. Babbitt*. The 1995 definition used the term livestock grazing to distinguish between "active" authorized grazing use and "active" authorized conservation use. Removing conservation use from this definition eliminates the need for this distinction.

The 1995 regulation revisions, which changed "grazing preference" from a term having a quantitative meaning (number of AUMs) to a qualitative meaning (superior position) and which introduced the new term, "permitted use," to represent the number of AUMs, have proven to be confusing. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges that BLM has associated with that property. This has been the foundation of BLM's system for tracking who has priority for receipt of public land grazing privileges since the enactment of the TGA. To clarify these terms and improve consistency in their application, consideration is being given to a modification of the definitions of grazing preference and active use and deletion of the term permitted use in this Proposed Rule and DEIS.

1.2.2.11 Definition and Role of the Interested Public

The present regulations define "interested public" as an individual, group, or organization that has (a) submitted a written request to the BLM to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on a specific allotment, or (b) has submitted comments to BLM regarding the management of livestock grazing on a specific allotment. On the basis of this definition, an individual or organization may be identified as an interested public covering an array of actions without participating in the public process leading to a specific grazing decision. Under the current regulations, someone could remain on the list of interested public indefinitely without ever commenting on or otherwise providing input in the decision-making process.

Under the present rules, the BLM is required to consult, coordinate, and cooperate with the

interested public before a proposed decision on the following actions:

- Designation or adjustment of allotment boundaries,
- Apportionment of additional forage,
- Reductions in permitted use,
- Emergency closures or modifications,
- Development or modification of grazing activity plans,
- Plans for range development or improvement programs,
- Renewal or issuance of grazing permits or leases,
- Modification of a permit or lease, or
- Issuance of temporary nonrenewable grazing permits.

The interested public is also provided a copy of all proposed and final decisions.

In addition, the interested public must be provided an opportunity to review, comment, and give input during the preparation of grazing evaluation reports used to support decisions. In some instances, this has led to confusion and suggestions that reports prepared to support decision processes are decisions themselves, with comment periods.

These requirements for involving the interested public in the development of decisions and plans on almost every level and aspect of the grazing program are very extensive, and are considered by some to be excessive, inefficient, or nonproductive. For these reasons, modifying the definition of "interested public," reducing the level of involvement of the interested public in the day-to-day grazing operation decisions, and refocusing participation on the primary decisions that set management direction are considered in this Proposed Rule and DEIS.

1.2.2.12 Water Rights

In 1995, the BLM added a provision to the regulations that stated that livestock water rights would be sought solely in the name of the United States under State water law. This was added because BLM wanted to (1) clarify its policy, and (2) make its policy consistent with that of the U.S. Forest Service. The BLM explained in the 1995 rulemaking that seeking water rights under State law had been its policy since 1981, and it would not be creating any new Federal reserved water rights or affecting valid existing rights.

Except for Federal reserved water rights for Public Water Reserves, livestock water rights are not Federal rights. They are State-based rights that require the United States, like any other entity, to comply with State substantive and procedural requirements to obtain them.

The current regulations limit BLM's flexibility to cooperatively pursue livestock water rights with permittees or lessees. To enhance such flexibility, BLM is considering modifications to the water rights provisions in this Proposed Rule and EIS.

1.2.2.13 Satisfactory Performance of Permittee or Lessee

By regulation, the BLM must determine whether applicants who apply for a new grazing permit or lease have a satisfactory record of past performance. The regulations define under what circumstances operators would be deemed to have an unsatisfactory performance,

including:

- having had a Federal grazing permit or lease cancelled for violations within 36 months of their application;
- having had a State permit or lease, for lands within the grazing allotment for which they are applying, cancelled for violations within 36 months of their application; or
- having been barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

Determinations of unsatisfactory performance in cases such as these are complicated by the wording of the present regulations. Although it is clear that if any one of these conditions exist the applicant would be deemed to not have a record of satisfactory performance, it is ambiguous as to what constitutes satisfactory performance. Some have interpreted the existing regulatory language to mean that there may be other conditions that would result in a determination that the applicant's performance is unsatisfactory. This open-ended definition has created some confusion. For these reasons, the BLM is considering revisions to the regulations to clarify the definition of satisfactory performance for applicants for a permit or lease in this Proposed Rule and DEIS.

1.2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

The present regulations state that changes in grazing use within the terms and conditions of the permit or lease may be granted by the BLM. There is no regulatory language, however, that defines what is meant by "within the terms and conditions of the permit or lease." This could lead to inconsistent interpretations and applications of this provision. Clarification and definition of what is meant by "within the terms and conditions" is, therefore, a consideration in this Proposed Rule and DEIS.

1.2.2.15 Service Charges

Regulations allow BLM to assess a service fee for processing each crossing permit, transfer of grazing preference, and cancellation and replacement of a grazing fee billing. Under FLPMA, these service charges should reflect BLM's processing costs and should be adjusted periodically as costs change. A \$10 service fee is presently assessed for each of the above actions. This fee does not reflect BLM's costs to provide these services. Consideration of revisions to the processing service charges to more adequately cover costs are, therefore, addressed in this Proposed Rule and DEIS.

1.2.2.16 Prohibited Acts

Regulatory changes from 1978 through the 1995 established several prohibited acts that are part of the present regulations. There are three categories of prohibited acts. The third category of prohibited acts identifies generally and specifically a number of Federal and State laws under which, if the permittee or lessee performs such acts, he may be subject to civil penalties (i.e., withdrawal of issuance, suspension, or cancellation of his permit or lease) if public land is involved or affected; the violation is related to grazing use authorized by a BLM permit or lease; the permittee or lessee has been convicted or otherwise found to be in violation of the laws or regulations; and no further appeals are outstanding.

As presently written, it is somewhat unclear as to whether or not the performance of the prohibited act must occur on the allotment for which the permittee or lessee has a BLM permit or lease. In other words, the current regulation does not limit citation under these

prohibited acts to a grazing operator's allotment, i.e., the operator can be cited for violating an act outside the allotment and be subject to the civil penalties.

Furthermore, there is some concern that some of the laws and regulations identified in this category of prohibited acts could result in penalties against permittees and lessees that are unfair because they involve a secondary penalty for a violation of a law or regulation. Some opponents of the current rule characterized the prohibited acts provision as a form of "double jeopardy." Although this is not a frequently applied section of the regulation, the level of controversy over the issue necessitates consideration in this DEIS.

1.2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

In general, under current regulations, all final BLM grazing decisions are implemented after the appeal period expires unless the decision is appealed and the Office of Hearings and Appeals or the Interior Board of Land Appeals stays the decision in response to a petition for a stay. The present regulations allow a petition for a stay to be filed by a permittee, lessee, or interested member of the public.

The present rules address grazing use pending resolution of appeals when a decision has been stayed as follows: If a decision on an application for a permit or lease is stayed, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis. If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal. If a decision to change authorized use is appealed and a stay is granted, the grazing use authorized during the time the decision is stayed will not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized. An application for a permit or lease made in conjunction with a preference transfer is not specifically addressed in the present rules. According to the present regulations, if a stay is granted on an appeal of an application by a preference transferee, then grazing use would be authorized consistent with the final decision pending resolution of the appeal. This issue is addressed in the Proposed Rule and DEIS.

Of additional concern is the issue of when an appellant is considered to have exhausted his administrative remedies and can proceed to court. The judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706, (APA) provide a right of action against agencies and officers of the United States to persons adversely affected or aggrieved by an agency action. However, such action may be sought in a Federal court only when a decision is "final." Generally, a decision becomes "final" only after appellants exhaust administrative remedies. The Preamble to the Proposed Rule states that BLM is attempting through this Proposed Rule to find a balance between the exhaustion of administrative remedies under the APA and its responsibilities under FLPMA and the TGA. 68 Fed. Reg. at 68465.

1.2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with Section 7 consultation requirements of the Endangered Species Act or their treatment in the decision-making process.

A biological evaluation (BE) provides a detailed review of programs or activities to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed designated critical habitat. Where listed species are not likely

to be adversely affected and formal consultation is not anticipated, the BE provides the basis of evaluation during informal consultation. A biological assessment (BA) is prepared to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify critical habitat. BAs must also be prepared for "major construction activities" per 50 CFR §402.2. The BA's conclusion determines whether a formal consultation or conference is necessary. The FWS and/or NOAA Fisheries must concur with the BA before formal consultation can begin.

However, in the 2002 Blake decision (Blake et. al. v. Bureau of Land Management, 156 IBLA 280 (2002)), the Interior Board of Land Appeals (IBLA) ruled that biological assessments should be treated as proposed decisions subject to protest and appeal. Treating biological assessments and biological evaluations as decisions would add additional administrative review and process steps beyond those required for a proposed action and could cause considerable delay in reaching a final decision on a proposed action. Due to concerns about such consequences, the BLM is addressing this issue in this Proposed Rule and DEIS.

1.3 SCOPING

A brief summary of the scoping process and the results of scoping are presented in this section.

1.3.1 Summary of Scoping Process

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to Prepare an EIS in the Federal Register on March 3, 2003. These notices requested public comment to assist BLM in the scoping process for both these documents. Copies of these two publications can be found in Appendix D and Appendix E, respectively, of this EIS. The comment period for both ended on May 2, 2003.

BLM held four public meetings in March 2003 in Albuquerque, New Mexico; Reno, Nevada; Billings, Montana; and Washington, D.C., to take comments and suggestions for the proposed rule and the draft EIS.

	Approximate Attendance	Number of Speakers from the Public
Reno, Nevada	200	25
Billings, Montana	60	23
Albuquerque, New Mexico	50	27
Washington, D.C.	25	5

See Chapter 5 for a more complete discussion of the scoping process and a summary of the scoping comments.

1.3.2 Results of Scoping

BLM received more than 8,300 comments on the ANPR and the NOI. Comments were made orally at the 4 public meetings and submitted via letter, e-mail and facsimile. Most of the written comments were form letters, however, about 35 letters containing substantive comments were received from special interest organizations and State and Federal agencies.

The public comments were extremely useful in the development of the Proposed Rule. The following summarizes some of the major results of scoping with respect to what was included or not included in the Proposed Rule:

- It was stated in the ANPR that consideration was being given to a proposal whereby BLM would be able to authorize the locking of gates on public land to protect private land and improve livestock operations. There was almost universal opposition from all groups to this proposal and it was dropped from further consideration in this rulemaking.
- It was stated in the ANPR that BLM was considering establishing provisions addressing reserve common allotments to be managed as reserve forage areas for use by permittees whose allotments were undergoing restoration treatments and required rest from grazing. Public comments were mixed on this issue, but there were sufficient concerns raised in the public comments that we decided to drop reserve common allotments from further consideration in this rulemaking.
- It was stated in the ANPR that BLM was considering clarifying which nonpermit-related violations we might take into account in penalizing a permittee or lessee. This was a very controversial issue. Although we considered removing several of the identified Federal and State laws and regulations from the list of prohibited acts, we determined that we did not have sufficient justification for making this change in the proposed rule. However it is included in an alternative.
- Although the only reference to monitoring in the ANPR was with respect to the definition, numerous comments were received from the public regarding the need for monitoring and for basing decisions on monitoring. In particular, there was public support for requiring that monitoring data be used in evaluating and determining if existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines for grazing administration. For this reason, the proposed action incorporates a requirement for using standards assessment and monitoring in arriving at the determination called for in §4180.2(c). In addition, an alternative is provided which allows discretion by the BLM manager in using assessment and monitoring data in making such determinations.
- It was stated in the ANPR that BLM was considering changes to the definition of grazing preference. Ranchers and livestock industry representatives were strongly in favor of returning to the pre-'95 regulatory definition of "preference" which defined the term as the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property owned or controlled by the permittee or lessee. The BLM has adopted this recommendation in the proposed regulation, but has maintained the concept from the current regulatory definition that "preference" also means a "superior or priority position against others for the purpose of receiving a grazing permit or lease" (§4100.0-5).

The public provided many thoughtful comments on the other issues raised in the ANPR as well as issues not addressed in the ANPR. There were many differing opinions about the pros and cons of various regulatory provisions and these comments were seriously considered in the development of these proposed regulations. A further summary of the public scoping comments are found in Chapter 5 and Appendix C of this DEIS.

1.4 RULEMAKING AND EIS PROCESS AND SCHEDULE

The general process for a rulemaking is as follows: Federal rulemakings are governed by the Administrative Procedure Act which, among other things, gives the public, with some exceptions, the right to participate in the rulemaking process by commenting on proposed rules. Agencies may publish an Advance Notice of Proposed Rulemaking (ANPR) as a means of obtaining public comment on issues the agency is considering addressing in a proposed rule. After consideration of any public comments, the agency publishes the proposed rulemaking in the *Federal Register* for a set period of time for the receipt of comments from the public. All comments are considered and changes may be made to the final rulemaking on the basis of comments received. The final rulemaking is also published in the *Federal Register* with the effective date 30 days, or in the case of a significant rule, 60 days from the publication date. The rulemaking then becomes part of the Code of Federal Regulations.

The preparation of an environmental impact statement (EIS) is governed by the National Environmental Policy Act of 1969 and the Council on Environmental Quality implementing regulations at 40 CFR Parts 1500-1508. When a proposed action, including a proposed regulatory or legislative recommendation, is projected to have a significant effect on the quality of the human environment an EIS must be prepared. An EIS is intended to provide decision makers and the public with a complete and objective evaluation of significant environmental effects, both beneficial and adverse, resulting from a proposed action and all reasonable alternatives. An EIS is the major vehicle for fulfilling the substantive environmental goals set forth in NEPA. The EIS process begins with the publication of a Notice of Intent (NOI) to prepare an EIS and request for public input. Public scoping meetings are also generally announced in the NOI. This early public process is known as scoping and must be open for a minimum of 30 days. The purpose of scoping, among other things, is to involve the public and affected agencies early in the process and to help identify significant issues to be analyzed, as well as alternatives and potential effects to be addressed. After scoping, the agency prepares a Draft EIS. The Draft EIS identifies the purpose and need for the proposed action, identifies alternatives, including the proposed action, the no action alternative, and other alternatives that meet the purpose and need; describes the affected environment; identifies the effects of the alternatives on the human environment; and summarizes consultation and coordination accomplished in the preparation of the Draft EIS. The Draft EIS is then released for public review, at least for 45 days but more typically for 60 days. After public review and consideration of all comments, the agency issues a Final EIS in which responses are provided to all comments on the Draft and any changes in the EIS are incorporated in the Final EIS, including any changes in the proposed action. The Final EIS is released for 30 days, after which the agency issues a Record of Decision (ROD) which sets forth the agency's final decision on the action.

Figure 1.4 graphically displays the EIS and rulemaking process.

1.5 RELATION TO OTHER POLICIES, PROGRAMS, AND PLANS

The BLM has initiated or been a partner in the development of a number of policy and program efforts related to the management of grazing on public lands. These efforts are summarized below:

Sustaining Working Landscapes Policy Initiative

On March 25, 2003, the BLM announced the initiation of a public process to gather input on actions the BLM could take to achieve the goals of the Sustaining Working Landscapes initiative. The idea was to begin identifying means for improving the long-term health and productivity of the public lands through innovative partnerships with permittees and lessees within the present regulatory framework.

Twenty-three public workshops were held in the West and one was held in Washington, D.C. At those workshops we introduced several concepts for consideration, including Conservation Partnerships, Reserve Common Allotments, Voluntary Allotment Restructuring, Conservation Easements, and Endangered Species Mitigation. The public raised many valuable comments and legitimate concerns. As a result of the workshops, as well as a national meeting of BLM Resource Advisory Council (RAC) representatives held in Washington, D.C., in April, it was decided that we would benefit from more involvement and advice from our established advisory councils throughout the West before moving forward with this initiative.

It was decided not to try to develop policy guidance--even in draft form--at this time. Rather, BLM has reviewed the comments from the workshops and attempted to provide responses to many of the questions raised on some of the policy concepts we had identified and provide this information to the Resource Advisory Councils (RACs).

The major components being considered in the Sustaining Working Landscapes Initiative that will be considered by the RACs are summarized below:

(1) Forming Conservation Partnerships with Grazing Permittees and Lessees--Authorized under FLPMA, Conservation Partnerships allow permittees and lessees to voluntarily enter into contracts or agreements with BLM to achieve upland recovery, riparian-wetland restoration, enhanced or improved water quality and quantity, improved wildlife or fisheries habitat, and listed species recovery. In return, conservation partnerships would allow permittees and lessees to seek grants to pay for labor and materials invested in conservation practices or provide increased management flexibility within agreed-on parameters.

(2) Voluntary Allotment Restructuring by Permittees to Improve Range Conditions--Voluntary allotment restructuring involves merging two or more allotments in which one or more of the permittees or lessees agrees to temporarily not graze their livestock. The other permittees or lessees would then be allowed to graze their herds over the entire area, resulting in lighter grazing use. The goal is to improve range conditions while supporting permittee economic viability.

(3) Establishment of Nonregulatory Policy for Reserve Common Allotments--Reserve Common Allotments (RCAs) would be managed as reserve forage areas to restore and recover rangeland. The BLM would allow RCAs to be used by permittees and lessees who are engaged in rangeland restoration and recovery activities that require them to rest their customary allotments. By temporarily shifting their livestock to RCAs, permittees and lessees would be able to rest their allotments while still meeting their economic needs.

(4) Encouraging Creative Ways to Achieve Endangered Species Act Objectives--The preceding elements all provide options for mitigating effects on listed species resulting from livestock grazing. For example, Conservation Partnerships could be used to restore rangelands, which benefit listed species. RCAs are intended to be grazed intermittently, but not to a degree inconsistent with their long-term conservation objective. Restructured allotments could incorporate forage reserves for grazing. Conservation easements could serve as mitigation for some listed species. Mitigation banks could also be an option under these concepts. They would permanently preserve or create listed species habitat, and then use that habitat as a source of mitigation credits to be sold to other land users to mitigate land development effects on listed species in order to comply with the Endangered Species Act.

The twenty-three (23) affected RACs in the West met throughout summer and fall 2003. Comments and recommendations were submitted to the BLM State Directors and forwarded to the Director in November 2003. These comments and recommendations will be the basis, along with feedback on the Proposed Rulemaking, for our future strategy with respect to the Sustaining Working Landscapes policy initiative.

Healthy Forest and Rangeland Initiative

The Healthy Forests and Rangeland Initiative is a regulatory and legislative initiative that aims to reduce unnecessary regulatory obstacles and allow for more effective and timely forest and rangeland health actions. It will speed forest and woodland thinning, as well as rangeland treatments. The initiative will also shorten the time for appeals of forest and rangeland health decisions, expedite Endangered Species Act consultations, and streamline environmental assessments. These measures will help protect grazing lands from devastating wildfires caused by excessive fuel buildup.

The new procedures preserve the principle of partnerships with local communities and interests. Most fuels treatment projects carried out under the Healthy Forest and Rangeland Initiative will use a collaborative process that includes all stakeholders and partners at the local level.

National Fire Plan

The Department of the Interior, the Forest Service and states are collaborating on the implementation of the National Fire Plan through guidance provided by the Collaborative Approach for Reducing Wildland Fire Risk for Communities and the Environment Ten Year Comprehensive Strategy (hereinafter referred to as the Ten Year Comprehensive Strategy) and the Ten Year Comprehensive Strategy Implementation Plan. The agencies have installed tracking and reporting mechanisms to provide accountability as accomplishments are made in firefighting, rehabilitation and restoration, hazardous fuels reduction, community assistance, and research. Collaboration with state and local governments is an important component of the Implementation Plan.

The National Fire Plan is a long-term investment that will help protect communities, natural resources, and the lives of firefighters and the public. It is a long-term commitment based on cooperation and communication among Federal agencies, States, local governments, tribes, and interested publics.

Like the Healthy Forest and Rangeland Initiative, an integral element of the National Fire Plan is to reduce excess forest and rangeland fuels which contribute to catastrophic fires and can harm adjoining grazing land.

Vegetation Treatment EIS

The BLM is preparing a national programmatic EIS to update four existing EISs for 13 western States, and to analyze vegetative treatments in four other western States and Alaska. The Vegetation Treatment EIS would examine the effects of such treatment as prescribed fire, herbicides and biological control agents, and mechanical and manual extraction.

As part of the EIS, the BLM will also evaluate the potential risks to humans, fish, and wildlife from several new herbicides that were not evaluated in earlier EISs. The BLM will also develop protocols as part of the EIS that will allow it to evaluate risks from chemicals that may be developed in the future.

The Vegetation Treatment EIS would analyze restoration activities such as prescribed fire, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems.

BLM Sage-Grouse Habitat Conservation Strategy

The BLM is currently working to help reverse the precipitous population decline of the sage-grouse, a species under consideration for federal listing under the ESA, through a comprehensive habitat conservation strategy. Prior to the arrival in the West of settlers of European descent, sage-grouse were widely distributed, inhabiting sagebrush habitats across areas that are now portions of at least 13 western states and three provinces in Canada.

Sage-grouse have since been extirpated from 5 states and 1 province. In 1998, a leading sage-grouse researcher estimated that overall distribution of all sage-grouse had decreased by an estimated 50% since settlement of the West began, and that the apparent breeding population size had decreased from 45 to 80% since the early 1950's, with much of that decrease occurring since 1980. At that time, the rangewide spring population of sage-grouse was estimated at 142,000 birds. This estimate included what in 2000 was recognized as the Gunnison sage-grouse, a new species whose decline in range and numbers far exceeds that of the now greater sage-grouse. There is no single factor responsible for the declines. Rather, it is primarily a combination of the continuing, loss, degradation and fragmentation of the habitats to which they are so closely tied, exacerbated by periodic drought.

Today the BLM manages over 50% of the remaining sage-grouse habitat. The BLM Sage-Grouse Conservation Strategy will describe the actions necessary to conserve sage-grouse and their habitats on BLM land. Each BLM state within the range of the sage-grouse will develop a state level, BLM-specific strategy. Both the BLM national and state strategies will complement state wildlife agency led conservation efforts.

The Strategy will provide BLM managers in different states with consistent guidance to aid the development of their respective sage-grouse BLM state-level habitat conservation strategies by making recommendations to ensure conservation of sagebrush habitat and sagebrush dependent species. The strategy is a sage-grouse range-wide effort that involves a diverse group of cooperators including multiple Federal, State and Tribal agencies as well as special interest groups and private landowners.

Appropriate and timely conservation measures for sage-grouse are critical to preventing further population declines and ESA listing of the species. Once a species is listed, land management processes become more cumbersome and land uses become more restricted. Pro-active measures on BLM's part may be the key to preventing the ESA listing of the sage-grouse.

Draft EIS - Chapter 2

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2.0 DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES

Chapter 2 contains detailed descriptions of the grazing regulation alternatives. These alternatives provide an array of options that respond to both the purpose of and need for regulatory changes and the issues and concerns raised in scoping as discussed in Chapter 1. The alternatives include: Alternative One—No Change in Regulations, which is also known as the "No Action" Alternative (Section 2.1); Alternative Two—the Proposed Action, which presents the BLM's proposed amendments to the regulations (Section 2.2); and Alternative Three—the Modified Action Alternative, which is similar to the proposed action with some modifications (Section 2.3).

The proposed regulation revisions as reflected in the proposed action alternative address 18 key elements as follows:

- Social, Economic and Cultural Considerations in the Decision-Making Process
- Implementation of Changes in Grazing Use
- Range Improvement Ownership
- Cooperation with State, Local, and County Established Grazing Boards
- Review on Biological Assessments and Evaluations
- Temporary Nonuse
- Basis for Rangeland Health Determinations
- Timeframe for Taking Action to Meet Rangeland Health Standards
- Conservation Use
- Definition of Grazing Preference, Permitted Use, and Active Use
- Definition and Role of the Interested Public
- Water Rights
- Satisfactory Performance of Permittee or Lessee
- Changes in Grazing Use Within Terms and Conditions of Permit or Lease
- Service Charges
- Prohibited Acts
- Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed
- Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

In addition to the key elements identified above, there are some additional regulatory text clarifications and minor modifications being proposed. These latter changes are shown in the strike-and-replace version of the proposed rule (Appendix A).

Alternatives considered but not analyzed in detail are presented in Section 2.4. These alternatives include some proposals that were initially considered by the BLM as well as recommendations from the public. The rationale for not considering these alternatives is also

discussed.

A comparison of all alternatives by key elements is presented in Section 2.5 (Table 2.5) of this Chapter. In Section 2.6 (Table 2.6) a summary comparison of effects across the alternatives is presented.

2.1 ALTERNATIVE ONE: NO CHANGE IN REGULATIONS (NO ACTION)

The regulations that direct BLM in administering their rangeland management program are found in 43 Code of Federal Regulations (CFR) 4100. The objectives of these regulations are to:

1. Promote healthy sustainable rangeland ecosystems;
2. Accelerate restoration and improvement of public rangelands to properly functioning conditions;
3. Promote the orderly use, improvement, and development of the public lands;
4. Establish efficient and effective administration of grazing of public rangelands; and
5. Provide for the sustainability of the western livestock industry and communities that are dependent on productive, healthy public rangelands.

Under the "No Action" alternative there would be no change in the regulations and BLM would continue to operate in accordance with existing regulations and policies. The following are the key elements of the present regulations that are addressed in this Proposed Rule-Draft EIS.

2.1.1 Social, Economic, and Cultural Considerations in the Decision-Making Process

Language would not be added to the existing grazing regulations specifically addressing the need for compliance with the National Environmental Policy Act (NEPA) of 1969 (Public Law 91-90; 42 U.S.C. 4321 et seq.) in making decisions on changes in grazing use. All grazing decisions would continue to be subject to compliance with NEPA, including requirements to use a systematic interdisciplinary approach which ensures the integrated use of natural and social sciences in planning and decision-making affecting the human environment. An environmental assessment is prepared for most grazing decisions. Environmental analyses prepared under NEPA would continue to address the effects of proposed actions and alternatives considered, including effects defined under NEPA to include ecological, aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative (40 CFR 1508.8). If there are no effects in a certain category, e.g., health impacts, the environmental assessment generally do not address that topic. Field interpretation and application of guidelines to analyze social, economic and cultural considerations would be less consistent in the absence of regulatory emphasis. To minimize paperwork, NEPA documentation is generally limited to those topics involving impacts.

2.1.2 Implementation of Changes in Grazing Use

As stated in the current grazing regulations, at §4110.3-3(a), after all consultation requirements are fulfilled, reductions in grazing use would be implemented through a documented agreement or by decision of the authorized officer. Such decisions must be issued as proposed decisions subject to the provisions of §4160.1, except for the following: (1) when immediate protection of resources or imminent likelihood of significant resource damage necessitates grazing use closures or modifications to be effective upon issuance of or as specified in the final decision (§4110.3-3(b)) and (2) when substantial risk of wildfire or immediate risk of erosion or other damage due to wildfire necessitates rangeland wildfire management decisions, such as fuel reduction projects using fire, mechanical, chemical or biological thinning methods or projects to stabilize lands affected by wildfire, to be effective immediately or on the date established in the decision (§4190.1). No specific regulatory requirements would be established concerning how decisions to change levels of grazing use are to be implemented.

2.1.3 Range Improvement Ownership

Range improvement projects are categorized as either "structural" or "nonstructural". Structural range improvements may be either "permanent" or "temporary". Examples of permanent structural range improvements include fences, wells, pipelines, guzzlers, and gabions. Examples of temporary structural range improvements include dip tanks, loading chutes, or portable water troughs. Nonstructural range improvements include vegetation treatments (spraying, vegetative seeding, chaining, and others). Either a "Cooperative Range Improvement Agreement" or a "Range Improvement Permit" is used to authorize construction of range improvement projects on lands administered by the BLM (§4120.3-1).

Under the current regulations (no action alternative), title would continue to be held in the name of the United States to all permanent range improvements such as fences, wells, and pipelines authorized under "Cooperative Range Improvement Agreements" after August 21, 1995 (§4120.3-2(b)) regardless of the level of investment by the permittee. All new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines would continue to be required to be authorized under a "Cooperative Range Improvement Agreement." "Cooperative Range Improvement Agreements" are used when the BLM and the livestock permittee or lessee cooperatively cost share the labor, equipment, or materials to build the project (§4120.3-2(a)). In such instances, the "Cooperative Range Improvement Agreement" outlines the costs contributed by each party and responsibilities for building and maintaining the improvement.

Under Range Improvement Permits, used to authorize removable range improvements where all costs of the project are borne by the livestock permittee or lessee (§4120.3-3), permittees or lessees would continue to have the option to hold title to temporary (removable) structural range improvements such as corrals, creep feeders, or portable water troughs placed on public lands under permit (§4120.3-3(c)).

Permittees or lessees would continue to hold a financial interest in proportion to their contribution for permanent structural and nonstructural range improvements even though they do not hold title. If a grazing permit or lease is cancelled in order to devote the public lands to another public purpose, the permittee or lessee shall receive reasonable compensation from the United States for the adjusted value of their interest in the authorized improvement. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage material owned by them and perform rehabilitation measures necessitated by that removal rather than be compensated for the adjusted value (§4120.3-6).

As provided in §4120.3-1(e), neither a "Cooperative Range Improvement Agreement" nor "Range Improvement Permit" would convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States. Furthermore, range improvement work performed by a cooperator or permittee on the public lands would not confer an exclusive right to use the improvement or the land affected by the range improvement work (§4120.3-2(d)).

2.1.4 Cooperation with State, Local, and County Established Grazing Boards

BLM would continue to be required to cooperate with involved agencies and governmental entities in managing the grazing program consistent with the present regulations in §4120.5-2. Requirements to cooperate, consistent with applicable laws of the United States, would continue to be limited to 1) agencies and governmental units that have programs and responsibilities involving grazing on public lands, 2) State, county, and Federal agencies administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds, and 3) State cattle and sheep sanitary or brand boards and County or other local weed control districts.

While it is generally current practise for BLM Field Offices to cooperate with State, County or locally established grazing boards, where they exist, cooperation would not be required by regulation. Current contacts with local grazing boards generally include reviewing range improvements and allotment management plans.

2.1.5 Review of Biological Assessments and Evaluations

Present grazing regulations do not specifically mention biological assessments or biological evaluations which are prepared to satisfy consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

Although the current regulations do not specifically mention any role for the permittee or lessee in the preparation of biological assessments or evaluations, such assessments or evaluations are reports used as a basis for grazing decisions. BLM is required to provide affected permittees or lessees, as well as States having lands or responsibility for managing resources within the affected area, and the interested public, with an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use or to change the terms and conditions of a permit or lease (§4130.3-3).

Thus, under present regulations, BLM would continue to provide permittees, lessees, States, and the interested public with an opportunity to comment on and provide input to the preparation of biological assessments or evaluations as reports prepared in support of the decision making process.

2.1.6 Temporary Nonuse

Grazing permittees or lessees would continue to be able to submit an annual application for temporary nonuse under existing regulations at §4130.2(g) for reasons including but not limited to financial conditions or annual fluctuations of livestock. Temporary nonuse is defined as the authorized withholding, on an annual basis, of all or a portion of permitted livestock use at the request of a permittee or lessee. Approval of temporary nonuse by BLM could continue, on an annual basis, but could not continue for more than 3 consecutive years. BLM would continue to have authority to annually apportion additional forage temporarily available as a result of authorized nonuse on a nonrenewable basis to qualified applicants (§4130.2(h); §4130.6-2).

2.1.7 Basis for Rangeland Health Determinations

BLM would continue to manage activities under livestock grazing permits and leases based on standards and guidelines for grazing management developed by BLM State Directors in consultation with affected BLM resource advisory councils (§4180.2(b)). The standards and guidelines developed by State Directors apply the fundamentals of rangeland health set forth in §4180.1 of the grazing regulations. The fundamentals for rangeland health, as defined by BLM, include (1) watersheds that are in or are making significant progress toward proper functioning physical condition, (2) ecological processes that support or are making significant progress toward attaining healthy biotic populations and communities, (3) water quality that complies with State standards and achieves or is making significant progress toward achieving BLM management objectives and (4) habitats for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species that are maintained or restored or are making significant progress towards being maintained or restored (43 CFR 4180.1).

The BLM authorized officer would continue to be required to take appropriate action when a "determination" had been made that grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines for grazing management (§4180.2(c)). There are no requirements under the present regulations on how those determinations are made.

2.1.8 Timeframe for Taking Action to Meet Rangeland Health Standards

BLM would continue to be required under current regulations to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that rangeland health conditions exist or progress is being made toward achieving rangeland health (§4180.1). Where standards and guidelines are effective, BLM would continue to be required to take appropriate action as soon as possible but no later than the start of the next grazing year if existing grazing management practices or levels of use are determined by the authorized officer to be significant causal factors in failing to achieve standards and conform with guidelines for grazing administration (§4180.2(c)).

This means that once a "determination" has been made, either under §4180.1 or §4180.2(c), the BLM authorized officer must - no later than the start of the next grazing year - consult, cooperate and coordinate with the permittee or lessee, the State and the interested public on possible actions to achieve standards, must complete any NEPA analysis requirements and documentation, must comply with any other applicable laws and requirements (e.g., Section 7 consultation under the Endangered Species Act if the proposed action "may affect" a listed species), must issue a proposed and final decision subject to protest and appeal, and must

implement the "appropriate action".

2.1.9 Conservation Use

Though there are provisions in the present regulations, the BLM does not, and would not, issue conservation use permits. No such permits are in place. The existing regulations define conservation use as an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of (1) protecting the land and its resources from destruction or unnecessary injury; (2) improving rangeland conditions; or (3) enhancing resource values, uses, or functions (§4100.0-5). Provisions are included in the existing regulations for authorizing conservation use for as long as 10 years under certain conditions.

The provisions regarding conservation use were included in the 1995 grazing regulation amendments. These rules were challenged and in 1999 the 10th Circuit Court of Appeals upheld the lower court's ruling that the Secretary of the Interior did not have the authority to issue conservation use permits.

2.1.10 Definition of Preference, Permitted Use, and Active Use

Grazing administration would continue under definitions in the present regulations.

Grazing preference or preference is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee (§4100.0-5).

Permitted use is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS (§4100.0-5). Under present regulations, the term permitted use encompasses active use and suspended use.

Active use means present authorized use, including livestock grazing and conservation use. Because conservation use was determined to be illegal by the 10th Circuit Court of Appeals, active use encompasses only authorized livestock grazing use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or portion of an allotment (§4100.0-5).

2.1.11 Definition and Role of the Interested Public

BLM would continue to apply the definition and related requirements in the present regulations.

Interested public is defined as an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment (§4100.0-5).

Generally, under present regulations, whenever the BLM is required to consult, cooperate and coordinate with or seek review and comment from affected permittees or lessees or the State having lands or responsible for managing resources within the area, current regulations also require doing so with the interested public.

The following summarizes those instances where the BLM is required, under the present

regulations, to consult, cooperate and coordinate with the interested public:

- Designating and adjusting allotment boundaries (§4110.2-4).
- Apportioning additional forage (§4110.3-1(c)).
- Reducing permitted use (§4110.3-3(a)).
- Emergency closures or modifications (§4110.3-3(b)).
- Development or modification of allotment management plan (§4120.2(a) & (e)).
- Planning of the range developments or improvement programs—Consult only (§4120.3-8(c)).
- Issuing or renewing grazing permit or lease (§4130.2(b)).
- Modifying a permit or lease (§4130.3-3).
- Issuing temporary nonrenewable grazing permits (§4130.6-2).

Under the present regulations, the BLM is also required to provide the interested public an opportunity to review and comment and give input during the preparation of reports that evaluate monitoring and other data used as a basis for making decisions to increase or decrease grazing use or to change terms and conditions of a permit or lease (§4130.3-3).

In addition, under the present regulations, the BLM is required to send copies of proposed and final decisions to the interested public (§4160.1(a) and §4160.3(b)).

2.1.12 Water Rights

Under the present regulations (§4120.3-9), any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering would be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right would be acquired, perfected, maintained, and administered in the name of the United States.

States have primary authority and responsibility for the allocation of water (water rights) for specified beneficial uses including livestock watering. Where provided for in State law, BLM applies for appropriative water rights in conformance with State law and generally protests private applications for water rights on lands administered by BLM.

2.1.13 Satisfactory Performance of Permittee or Lessee

BLM would continue to apply present regulations that identify requirements for satisfactory performance which must be met by applicants for renewal of existing or issuance of new permits and leases (§4110.1(b)).

For a renewal, an applicant must be in substantial compliance with the terms and conditions of the existing permit or lease and with the rules and regulations applicable to the permit or lease in order to be deemed to have a satisfactory record of performance. The authorized officer may take into account circumstances beyond the control of the applicant seeking renewal of a permit or lease in making determinations of satisfactory performance (§4110.1(b)(1)).

For a new permit or lease, an applicant shall be deemed **not to have** a record of satisfactory performance when:

- they **have had** any Federal grazing permit or lease cancelled for violations of the permit or lease within 36 months of their application;
- they **have had** any State grazing permit or lease, for lands within the grazing allotment for which they are applying, cancelled for violations within 36 months of their application; or
- they **are barred** from holding a Federal grazing permit or lease by order of a court (§4110.1(b)(2)).

2.1.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

BLM would continue to apply present regulations allowing changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer (§4130.4). The regulations identify the following applications for changes covered by this section:

- to activate forage in temporary nonuse or conservation use;
- to place forage in temporary nonuse or conservation use; or,
- to use forage that is temporarily available on designated ephemeral or annual ranges.

There are no provisions that define what is meant by "within the terms and conditions of the permit or lease" in the existing regulations.

2.1.15 Service Charges

BLM would continue to assess a \$10 service charge for each crossing permit, transfer of grazing preference, application solely for nonuse, and replacement or supplemental billing notice (§4130.8-3). Except for actions initiated by the BLM, regulations allow the BLM to assess a service fee for such actions. Pursuant to the Federal Policy Management and Policy Management Act of 1976 (43 U.S.C. 1734[a]), the service charge should reflect BLM's processing costs and should be adjusted periodically as the processing costs change. The existing regulations do not specify the amount of the service charge.

2.1.16 Prohibited Acts

BLM would continue to have authority and discretion to apply penalties for specific prohibited acts to both permittees and other public land users. Upon violation of any provision of the grazing regulations by a livestock permittee or lessee BLM would be able to (1) withhold issuance of a grazing permit or lease, (2) suspend grazing use authorized under a grazing permit or lease, in whole or in part, or (3) cancel a grazing permit or lease and preference in whole or in part (§4170.1). Some actions could also be subject to the penalty provisions under the Taylor Grazing Act or the Federal Land Policy and Management Act (§4170.2).

In Subpart 4140, the present regulations have several provisions dealing with the consequences of committing certain specified prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees whereas others apply to anyone who commits those acts while on lands administered by the BLM.

There are three categories of prohibited acts in the present regulations.

The first category is found in §4140.1(a) and states that permittees and lessees who perform the prohibited acts listed under this section may be subject to civil penalties (e.g., withdrawal of issuance, suspension or cancellation of permit or lease). Six prohibited acts are identified in this section including:

- violations of terms and conditions of permits or leases;
- failing to make substantial grazing use as authorized for 2 consecutive years;
- placing supplemental feed on public lands without authorization;
- failing to comply with terms, conditions and stipulation of cooperative range improvement agreements or range improvement permits;
- refusing to install, maintain, modify, or remove range improvements when so directed by the BLM; and
- unauthorized leasing or subleasing.

This first category of prohibited acts allows BLM to address grazing violations and to take direct action against violations under a permit or lease.

A second category of prohibited acts are found in §4140.1[b]. Any person (not just a permittee or lessee) who commits any of the eleven prohibited acts in this section will be subject to civil and criminal penalties. The prohibited acts identified in this section include:

- allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease and an annual grazing authorization or in violation of any authorization;
- installing, using, maintaining, modifying, or removing range improvements without authorization;
- cutting, burning, spraying, destroying, or removing vegetation without authorization;
- damaging or removing U.S. Property without authorization;
- molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;
- littering;
- interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;
- knowingly and willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports or amendments thereto;
- failing to pay any fee required by the authorized officer pursuant to the part, or making payment of grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

- failing to reclaim and repair any lands, property, or resources when required by the authorized officer; and
- failing to reclose any gate or other entry during periods of livestock use.

This second category of prohibited acts allows generally applicable enforcement actions on BLM public lands.

The third category of prohibited acts is found in §4140.1(c). Under this provision, the BLM may take civil action against a grazing permittee or lessee that commits these prohibited acts if the following four conditions are met: (1) public land is involved or affected; (2) the action is related to grazing use authorized by a BLM-issued permit or lease; (3) the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of these laws; and (4) no further appeals are outstanding.

For this category of prohibited acts, unlike the first two categories, the primary responsibility for enforcement generally rests with another Federal or State agency, not the BLM. Prohibited acts in this category include:

- Violation of Federal or State laws or regulations pertaining to the:
 - placement of poisonous bait or hazardous devices designed for the destruction of wildlife;
 - application or storage of pesticides, herbicides, or other hazardous materials;
 - alternation or destruction of natural stream courses without authorization;
 - pollution of water sources;
 - illegal take, destruction, or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and
 - illegal removal or destruction of archeological or cultural resources.
- Violation of the:
 - Bald Eagle Protection Act;
 - Endangered Species Act; or
 - the regulations concerning the protection and management of wild horses and burros.
- Violation of State livestock laws or regulations relating to:
 - the branding of livestock;
 - breed, grade, and number of bulls;
 - health and sanitation requirements; and
 - violating State, county, or local laws regarding the stray of livestock to areas that have been formally closed to open range grazing.

Under this category, the BLM-issued permit or lease is not required to be related

geographically to the location where the prohibited act occurred.

2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

BLM would continue to operate under the administrative remedies regulations set forth in Subpart 4160. Described in detail are the procedures for issuing and protesting proposed decisions (§4160.1 and §4160.2) and issuing and appealing final decisions (§4160.3 and §4160.4). Procedures for requesting a stay of a final decision and allowable grazing use if a final decision is stayed are identified in §4160.3.

When the Office of Hearing and Appeals stays a final decision regarding an application for grazing authorization, an applicant who was granted grazing use in the year preceding the time the decision is stayed may continue at the level of use authorized under the permit or lease previously in effect. This provision does not apply if the grazing use in the preceding year was authorized on a temporary nonrenewable basis. Where the applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the grazing use under the stay is consistent with the final decision pending a final determination on the appeal (§4160.3(d)).

When the Office of Hearing and Appeals stays a final decision to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized (§4160.3(e)).

2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

In its 2002 Blake et al. v. Bureau of Land Management decision (156 IBLA 280 (2002)), the IBLA affirmed its ruling in a 1998 opinion that a biological assessment prepared under section 7 of the Endangered Species Act (ESA) for a proposed action to permit grazing must be treated as a BLM decision subject to protest and appeal.

Thus under the no action alternative, biological assessments and evaluations would be treated as decisions subject to protest and appeal.

2.2 ALTERNATIVE TWO: PROPOSED ACTION

Alternative Two is the BLM's Proposed Action which responds to the purpose and need described in Chapter 1 by changing certain elements of the agency's present grazing regulations. The proposed changes are described below by element. In addition to the key elements, there are several nonsubstantive or editorial changes that would be made under this alternative. Nonsubstantive or editorial changes are shown in the strike and replace copy of the proposed regulations in Appendix A.

2.2.1 Social, Economic, and Cultural Considerations

The Proposed Action would add a provision in §4110.3 that would require BLM to analyze and, if appropriate, document the relevant social, economic and cultural effects of the proposed action to change grazing preference. Such documentation would be incorporated in the appropriate NEPA document. The regulation would promote consistent treatment of effects when analyzing proposed grazing changes.

2.2.2 Implementation of Changes in Grazing Use

BLM would modify how changes in active use are implemented through the proposed regulation. This modification to §4110.3-3 would provide that changes in active use of more than 10% would be phased in over a 5-year period unless the affected permittee or lessee agrees to a shorter period or the changes must be made before 5 years have passed to comply with applicable law. For example, if a biological opinion issued under Section 7 of the Endangered Species Act (ESA) required immediate implementation of a change in active use, then compliance with ESA would take precedence and there would not be a 5-year phase-in in that case.

It is anticipated that, in practice, portions of the total change would be applied in years one, three, and five. The 5-year phase in period for changes in active use would provide time for more gradual operational adjustments by grazing permittees or lessees to lessen sudden adverse economic effect that may arise from a reduction, or to allow time to plan livestock management changes or to adjust herd size. The phase in period would also allow BLM to monitor and observe the effects of the changes in increments. This 5-year phase in period is similar to the regulations in effect in 1994.

2.2.3 Range Improvement Ownership

Under the proposed action, title to new, permanent, structural grazing-related range improvements such as fences, wells, and pipelines authorized under a Cooperative Range Improvement Agreement and constructed on public lands would be shared between the cooperator(s) and the United States in proportion to their initial contribution to on-the-ground project development and construction costs (§4120.3-2(b)). Cooperators would include any individual or organization that contributes funding, materials or labor to the construction or development of a range improvement.

Structural improvements include wells, pipelines, or fences constructed on BLM-managed public lands. This would return the provision on how title for improvements constructed under Cooperative Range Improvement Agreements was shared before the 1995 change in regulations. Granting title to a structural improvement on public lands does not grant exclusive right to use the improvement or title to the underlying lands themselves.

Cooperative Range Improvement Agreements will continue to include provisions that protect the interests of the United States in its lands and resources. The ownership of existing range improvements would not be affected. This provision would provide incentive for permittees and lessees to cooperate in the development of range improvements to achieve management or resource condition objectives.

Permittees would continue to own temporary structures such as dip tanks, loading chutes, or portable water troughs placed on public lands under a Range Improvement Permit. The United States would continue to have title to nonstructural range improvements (e.g., seeding).

2.2.4 Cooperation with State, Local, and County Established Grazing Boards

BLM is proposing to amend §4120.5-2 by adding State, local, and county-established grazing boards to those groups we would routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weed eradication and control. The proposed provision would require that BLM cooperate with such grazing boards in reviewing range improvements and allotment management plans on public lands. In many States there are State, county, or locally established grazing advisory boards whose function is to provide guidance on grazing administration, generally focusing on range improvements, on public lands. These locally established grazing boards, where they exist, would be a valuable tool for gathering additional local input for BLM's decision-making processes.

2.2.5 Review of Biological Assessments and Evaluations

Under the proposed regulations at §4130.3-3, specific language would be added stating that when a biological assessment or biological evaluation prepared under the Endangered Species Act (ESA) is used to support decisions that modify grazing use, BLM will, to the extent practical, provide an opportunity to the affected permittee or lessee, the State, and the interested public to review and provide input to the biological assessment or evaluation during its preparation.

Biological assessments/evaluations are part of the Section 7 consultation process under the ESA that federal agencies undertake when they have determined that an action "may effect" a listed species. A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

The new regulatory language would add a specific reference to biological assessments and biological evaluations, clarify and highlight the need to allow review on biological assessments or evaluations and other reports used as part of the decision process, and promote consistent application bureau-wide. The change would also clarify that biological assessments or evaluations and other reports are analysis documents used for decision making, and thus subject to review to the extent practical during their preparation.

The proposed regulations are also modified to clarify that although biological assessments and evaluations and other reports prepared in support of the decisions to modify grazing use are subject to review during preparation, the review opportunity does not include a regulatory obligation for comment. Reviewing parties may still elect to provide comments during preparation of reports, biological assessments or biological evaluations.

Public participation in BLM's decision making, usually as part of the NEPA process on a proposed action, also provides opportunities for public review, comment and input. Because biological assessments or evaluations are typically used to supplement grazing management evaluations, they are generally available through these processes.

2.2.6 Temporary Nonuse

BLM proposes to move provisions addressing approval of "temporary nonuse" from §4130.2 to §4130.4 and revise them to allow BLM to have the discretion to approve applications to temporarily not use all or part the grazing use authorized by a permit or lease on a year-to-year basis when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. There would be no limit on the number of years of consecutive nonuse allowed under the proposed regulations, however nonuse would only be approved by the BLM for a legitimate purpose or need to provide for: (1) natural resource conservation, enhancement or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or (2) the business or personal needs of the permittee or lessee.

Events such as drought, fire or less than average forage growth typically result in "rangeland conditions" that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease. When the BLM, in consultation with the operator, determines rangeland conditions are such that less grazing use would be appropriate, BLM encourages operators, if they have not done so already, to apply for nonuse for "conservation and protection of rangeland resources." This is the simplest way to temporarily reduce use to respond to rangeland conditions. In some cases, approval of an application for temporary nonuse also precludes the need for BLM to issue a decision to temporarily suspend use under §4110.3-3(b), although BLM retains the discretion to do this. "Personal and business needs" of the grazing operator are actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

2.2.7 Basis for Rangeland Health Determinations

Under the new regulations in §4180.2, determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on the results of standards assessment and monitoring data.

While current policy and procedural guidance recommends that both standards assessments and monitoring data be used as the basis for making such determinations, use of both is not required either by policy or regulation. This proposed revision would require use of both assessments and monitoring as a basis for determinations.

2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards

Under the proposed regulations at §4180.1, BLM would be required to take action to assist in achieving the fundamentals of rangeland health only if no applicable standards and guidelines are in place. Most BLM States have completed establishment of standards and guidelines, therefore this section would have limited applicability under present circumstances. The Proposed Rule would also provide for implementation of appropriate action no later than the start of the next grazing year after completing all consultation requirements and compliance with other laws and requirements.

Changes in timeframes would also be implemented through modifications in §4180.2(c). To allow sufficient time to complete all consultation and other legally mandated requirements, the Proposed Action would require the BLM to formulate, propose, and analyze appropriate actions to address the failure to meet the rangeland health standards or to conform to the guidelines for grazing management no later than 24 months after the determination. The conclusion of this process would be documented by either execution of an applicable and

relevant documented agreement or issuance of an applicable final decision. Upon executing the agreement or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable but not later than the start of the next grazing year (§4180.2(c)).

The timeframe adjustments in both §4180.1 and §4180.2(c) are based on the need for providing adequate time for BLM to complete mandated consultation and other legal requirements prior to taking action. BLM has certain specific requirements for consultation, cooperation and coordination prior to issuing any proposed decisions including those proposed decisions related to changes in active use, renewal, issuance or modification of grazing permits and leases, changes in allotment boundaries, preparation and modification of allotment management plans and resource activity plans, and plans for range improvements. As part of the planning and decision-making process, the BLM is also required to comply with applicable laws and regulations, including but not limited to the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Archeological Resources Protection Act (ARPA). After a determination has been made that livestock grazing management practices or levels of use are significant factors in the failure to achieve the rangeland health standards or conform with the guidelines for grazing administration, the BLM must comply with the above analysis and consultation requirements mandated by these laws and regulations prior to implementing any decision.

2.2.9 Conservation Use

Under the Proposed Action, all references to and provisions on "conservation use" would be deleted from the regulations. This would bring the regulations into conformance with the 1999 10th Circuit Court decision (Public Lands Council v. Babbitt, 929 F.Supp. 1436 (D. Wyo. 1996), rev'd in part and aff'd in part, 167 F.3d 1287 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000)).

2.2.10 Definition of Preference, Permitted Use, and Active Use

BLM would define "grazing preference" or "preference" as "the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease."

This definition is similar to how the term was defined when it first was defined in the grazing regulations in 1978, and to how it was defined before 1995. The concept of grazing preference as it would be defined in this rulemaking includes two elements: (1) a livestock forage allocation on public lands; and (2) that priority for receipt of that allocation is attached base property. Ownership or control of base property gives the owner preference for receipt of a grazing permit or lease authorizing grazing use to the extent of the active preference, as well as priority for receipt of forage that may later be determined to be available for livestock grazing to the extent of any preference that is in suspension.

Under the proposed regulations, BLM would also remove the term "permitted use" from the definitions (4100.0-5) and generally replace this term wherever it occurs in the regulations with either "grazing preference" or "preference," or "active use" depending on the regulatory context.

The definition of "active use" would also be modified to mean that portion of the grazing preference that is available for livestock grazing use based on rangeland carrying capacity

and resource conditions in an allotment under a permit or lease, and that is not in suspension (4100.0-5). This change would remove the term "conservation use" and "livestock use" and make it clear that "active use" refers to a forage amount that it is based on the carrying capacity of, and resource conditions in, an allotment and that it does not refer to forage that had been allocated at some point in the past, but has since been determined to no longer be present and which now is held in suspension.

Although the connection between land use plans and grazing preference would not be stated in the definition of "grazing preference" as it is being proposed, the regulatory text would reflect the relationship between "active use" and land use plans at §§ 4110.2-2, 4110.3(a)(3), 4110.3-1 and between grazing permits and leases and land use plans at §4130.2.

The forage amount available on public lands that is available for livestock grazing use would continue to fluctuate because of changed resource conditions, or changed administrative or management circumstances. It is well settled that livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 may be adjusted based on BLM land use planning decisions, or the need to change grazing use to meet objectives specified in land use plans (see, for example, Public Lands Council v. Babbitt, 529 U.S. 728 (2000)).

2.2.11 Definition and Role of the Interested Public

BLM proposes amending the present definition of "interested public" to mean an individual, group, or organization that has either: (1) submitted a written request to authorized officer to be given an opportunity to be involved in the BLM decision-making process for the management of livestock grazing on public lands and who has followed up on that request by commenting on or otherwise participating in the decision-making process as to the management of a specific allotment; or (2) submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Under the proposed rule, BLM would retain requirements for consultation, cooperation and coordination with the interested public for the following BLM actions:

1. Apportioning additional forage on BLM managed lands;
2. Developing or modifying an allotment management plan or grazing activity plan;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

In addition, the requirement for the authorized officer to provide copies of proposed and final grazing decisions would be retained.

This proposed rule would remove the regulatory requirement that the authorized officer consult, cooperate and coordinate with the interested public on the following actions:

1. Designating and adjusting allotment boundaries;
2. Changing active use;
3. Issuing emergency closures or modifications;
4. Issuing or renewing a grazing permit or lease;

5. Modifying a grazing permit or lease; and
6. Issuing temporary nonrenewable grazing permits.

Generally, the above actions involve the day-to-day operational aspects of the grazing program. These changes would not remove the BLM's discretion to consult at its option on these actions.

This change would not affect the requirement to consult with the interested public where such input would be of the greatest value in setting management direction for public lands, such as when planning vegetation management objectives in an allotment management plan, or by providing input to reports evaluating range conditions. The change would allow the authorized officer and the grazing operator the discretion to determine appropriate on-the-ground management actions to achieve plan objectives or respond to variable resource conditions. BLM would retain the discretion to consult, cooperate and coordinate on any item if the authorized officer determined that value would be added to grazing management decisions or actions, above and beyond what the regulation requires. Also, this proposed revision will not affect BLM's practice of making all NEPA documents available to the public in accordance with CEQ regulations. As previously indicated, the interested public will be provided a copy of the proposed decision and associated NEPA documents and will be able to protest proposed decisions. The interested public will also receive a copy of the final decision.

2.2.12 Water Rights

BLM proposes to amend this section by removing the reference to the effective date of this provision in the first sentence and removing the second sentence. This would remove the provision stating that the United States must acquire livestock water rights. The proposed provision would read as follows: Any right acquired by the United States to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located. Under the revised provision, BLM would have whatever flexibility State law provides.

2.2.13 Satisfactory Performance of Permittee or Lessee

BLM would move provisions regarding what constitutes "satisfactory performance" of an applicant for a permit or lease from §4110.1, Mandatory qualifications, to §4130.1-1, Filing applications, to better organize the regulations. The provisions addressing what constitutes satisfactory performance for applicants for new permits and leases would also be revised.

The present rule provides that applicants for renewal of permits and leases would be deemed *to have* a satisfactory record of performance if they have substantially complied with the terms and conditions of the expiring permit or lease and other rules applicable to the permit or lease, while applicants for new permits or leases would be deemed *to not have* a satisfactory record if they have had a Federal or State lease cancelled within the previous 36 months, or have been legally barred from holding a grazing permit or lease. The existing sentence construction does not limit the circumstances under which BLM will consider an applicant for a new permit or lease to not have a satisfactory record of performance.

The changes proposed would clarify that the scope of the criteria that BLM would consider when determining whether an applicant for a new permit has a satisfactory record of performance is limited to the criteria stated in the regulations. The proposed rules do this by

changing the sentence construction for applicants for new permits or leases to reflect what would be required for an applicant for a new permit or lease **to have** a satisfactory record of performance. Basically the regulations would state that BLM would deem applicants for new permits or leases to have a record of satisfactory performance when the applicant or affiliate has not had any Federal grazing permit or lease cancelled for violations of the permit or lease within the 36 months immediately preceding the date of the application; or the applicant or affiliate has not had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled for violation of the permit or lease within 36 months of the date of the application; or the applicant or affiliate is not barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

BLM would amend section §4130.4 to indicate what is meant by the phrase "within the terms and conditions of the permit or lease." BLM would define "temporary changes within the terms and conditions of the permit or lease," to mean changes to the number of livestock and period of use that may be granted in any one grazing year either: (1) in response to annual fluctuations in time and amount of forage production; or (2) to meet locally established range readiness criteria.

BLM would allow such changes if they:

1. do not result in removing more forage than the "active use" specified by the permit or lease;
2. provide that grazing use begins no earlier than 14 days before the grazing begin date specified by the permit or lease, and
3. provide that grazing use ends no later than 14 days after the grazing end date specified by the permit or lease.

The new provisions would also require that BLM consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

Livestock periods-of-use established by the grazing permits are based on the anticipated average dates that the range is "ready" to be grazed. "Range readiness" is the stage of plant growth at which grazing may begin without doing permanent damage to vegetation or soil. The point where the range is "ready" for grazing use can and does vary from year to year around a long-term average date of readiness. BLM believes that a 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations.

BLM would consider applications for changes in grazing use "within the terms and conditions of the permit or lease" on a case-by-case basis. If BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that was allowed in one year to respond to the conditions of that year would not be carried forward to the next year. An application for grazing use that falls outside of this flexibility would be not be considered "within the terms and conditions" of the authorizing permit or lease.

Temporary changes in grazing use that are determined to be "within the terms and conditions of the permit or lease" would not typically require additional NEPA analysis because the

impacts would fall within the scope of those impacts analyzed in the existing applicable NEPA document for the permit or lease. Exceptions would only occur if the 14 day period overlapped some critical time periods that were not addressed or were such time periods were required to be avoided in the existing NEPA document (e.g., desert tortoise emergence in the spring or fall).

2.2.15 Service Charges

Under the proposed regulations at Section §4130.8-3, the service charge for processing various actions would more closely reflect the processing costs. Except when initiated by the BLM, the following service charges would be assessed for the processing of the following actions:

- Issuance of a crossing permit—\$75
- Transfer of grazing preference—\$145
- Cancellation and replacement of a grazing fee billing—\$50

A crossing permit may be issued to any applicant showing a need to cross the public land or the land under BLM control with livestock for proper and lawful purposes. A crossing permit for trailing livestock would contain terms and conditions deemed necessary by the authorized officer for temporary grazing use that would occur (§4130.6-3).

A grazing preference transfer occurs when base property is sold or leased and an application is made to the BLM for the transfer of the grazing preference to the new owner or lessee. A grazing preference may also be transferred from one base property to another.

The service charge for cancellation and replacement of a grazing fee billing is intended to cover the administrative costs associated with canceling and issuing a new billing when a permittee or lessee requests changes in grazing use after the bill has been issued.

2.2.16 Prohibited Acts

As indicated in the discussion of the No Action Alternative, there are three categories of prohibited acts. Under the proposed change, the third category of prohibited acts found in §4140.1(c) would be changed to clarify that this section would be applicable only when the permittee or lessee commits a prohibited act on an allotment for which he holds a permit or lease from the BLM. Otherwise, permittees or lessees would be treated similarly to any other individual committing a similar prohibited act (i.e., other laws or regulations may apply). The effect of this change is to limit applicability of the section to circumstances where there is a geographical connection between the prohibited act and the grazing permit or lease. This change is also intended to ensure that the performance of the prohibited act is related to the operator's permit or lease.

Editorial changes to improve the clarity of the regulations are also incorporated in the proposed changes for this section.

2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

Although the present regulations address what actions would be taken by the BLM when a stay is granted on an appeal of a decision to modify or renew a permit or lease, they do not address actions that would be taken when a stay is granted on an appeal of a decision on a permit or lease application submitted in conjunction with a preference transfer.

The proposed action in §4160.4 provides that if OHA stays a BLM decision that changes the terms and conditions of a permit or lease during its current term, or offers a preference transferee a permit or lease with terms and conditions that are different from the previous permittee or lessee, or renews a permit or lease with changed terms and conditions, then the immediately preceding authorization and any terms and conditions therein would not expire, and grazing would continue under the immediately preceding authorization, subject to the provisions of the stay order and provisions of other applicable law, pending resolution of the appeal.

The proposed action also provides that if OHA stays a BLM decision that modifies a permit or lease because of less land available for grazing, affects an application for ephemeral or annual rangeland, affects an application for temporary and nonrenewable grazing use, or affects an application for a permit or lease that is not made in conjunction with a preference transfer, then the BLM would authorize grazing use consistent with the decision pending resolution of the appeal.

In addition, some procedural requirements from Subpart 4160 would be removed and replaced with a cross-reference to the regulations governing the Office of Hearing and Appeals in 43 CFR Part 4. Many of the procedural requirements set forth in existing §4160.4 are restatements of the requirements found in §4470 et seq. for appealing grazing decisions, and it is not necessary to restate them in the grazing regulations in Subpart 4100.

2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The Proposed Rule, at §4160.1(d), would clarify that a biological assessment or biological evaluation prepared in accordance with Section 7 of the Endangered Species Act would not be a decision for purposes of protest or appeal.

This regulatory revision would address concerns regarding the 2002 IBLA Blake decision (Blake et al. v. Bureau of Land Management, 156 IBLA 280 (2002)) wherein the court ruled that BAs were to be treated as decisions subject to the protest and appeals provisions of §4160. The Blake ruling raised concerns about the potential for major delays in the decision-making process as a result of this requirement.

The proposed regulations at §4130.3-3(b) would clearly state that BAs and BEs are similar to other reports used by BLM in decision making and, therefore, the affected permittees or lessees, States, and the interested public would have an opportunity to review BAs and BEs. Clarification of this review opportunity, plus the clarification that BAs and BEs are not decisions subject to protest and appeal, would eliminate confusion and concerns created by the Blake ruling.

A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

2.3 ALTERNATIVE THREE: MODIFIED ACTION

Alternative Three is essentially the same as Alternative Two (Proposed Action) with

modifications to four key elements. Modifications involve the following elements: Implementation of Grazing Decisions, Temporary Nonuse, the Basis for Rangeland Health Determinations, and Prohibited Acts.

2.3.1 Implementation of Changes in Grazing Use

This provision is the same as the proposed action, except that the 5-year phase-in of changes in use would be discretionary rather than mandatory. In other words, changes in active use in excess of 10% may not have to be implemented over a 5-year period. The BLM-authorized officer may, at his or her discretion, determine that a shorter period is appropriate or no phase-in period is warranted. For example, if a special status species that is not presently covered by the Endangered Species Act is being affected by levels of active use, the BLM could decide to immediately implement a reduction in active use without agreement of the affected permittees, following the required consultations and allowing for protest and appeal of the decision.

2.3.2 Temporary Nonuse

Under this proposal, permittees or lessees could submit and BLM could approve applications for nonuse for no more than 5 consecutive years. All other provisions related to the authorization of temporary nonuse would be the same as for the Proposed Action.

2.3.3 Basis for Rangeland Health Determinations

This provision would be the same as the proposed action except that the BLM would not be required to use both assessments and monitoring as bases for determinations; that is, rangeland health determinations could be based on either standards assessments or monitoring data, or both. This would increase BLM manager flexibility and discretion, allowing that some rangeland health determinations would not be as rigorously developed as a result of priorities and funding for monitoring.

2.3.4 Prohibited Acts

Section 4140, Prohibited Acts, would be the same as the proposed action except for changes described below.

The following would be **added** to the second category of prohibited acts (§4140.1(b)):
"Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer." This would enable the BLM to enforce weed seed free requirements in states which do not have weed seed free certification programs.

The following would be **deleted** from the third category of prohibited acts (§4140.1(c)):
Violation of Federal or State laws or regulations pertaining to the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses without authorization; pollution of water sources; illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and illegal removal or destruction of archaeological or cultural resources. Such acts would still be prosecuted by the appropriate Federal or State agency, however, after conviction, the permittee or lessee could not be additionally penalized by having his permit or lease denied, suspended, or canceled.

2.4 ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

Many substantive issues and recommendations were provided by the public during the scoping period. Public comments were fully considered and many of their recommendations are reflected in the proposed action or in the modified action alternative. Many other issues raised or recommendations made were considered but not analyzed in detail in this Draft EIS, because they are either beyond the scope of the document, did not meet the basic purposes of these proposed changes to the regulations, or the BLM decided it could better address the issues through the development of policy.

The following are alternatives the BLM has considered but has not analyzed in detail in this EIS:

- **Increasing grazing fees or providing for competitive bidding for assignment of permits and leases.** In the Advance Notice of Proposed Rulemaking (ANPR) for proposed amendments to BLM's grazing administration regulations, the BLM stated that grazing fees would not be addressed in this rulemaking. However, several commenters raised the issue of fees and requested changes to the grazing fee system. Some commenters asked the BLM to develop a competitive bidding process to replace the present system for assigning grazing permits and allocating grazing preference and the present grazing fee formula. Modifications to the fees and the method for allocating permits or leases would require legislative action. The BLM determined that such proposals are outside the scope of this proposed rule.
- **Removing Grazing Fee Surcharge Requirements.** Several commenters requested that the BLM consider removing the grazing fee surcharge provisions from the regulations. The grazing fee surcharge was added by the 1995 regulations to address concerns raised by the General Accounting Office and Office of the Inspector General regarding the potential for rancher windfall profits arising from BLM's practice of allowing for the subleasing of public land grazing privileges. Some BLM grazing permittees enter pasturing agreements wherein they take temporary control of a third party's livestock and graze them under their permit or lease. The permittee pays the Federal grazing fee and charges the third party an amount negotiated between them for the forage and care of the livestock. The BLM assesses a fee surcharge in this circumstance that equals 35% of the difference between the present Federal grazing fee and the private grazing land lease rate. An exception to the surcharge requirement is provided for children of permittees and lessees. The BLM continues to believe that the surcharge is an equitable way in which to address this issue. In addition, this is a grazing fee issue and, as indicated in the ANPR, the BLM has determined that grazing fees are outside the scope of this rulemaking.
- **Reestablishing BLM Grazing Advisory Boards.** A number of commenters recommended that the BLM reestablish BLM Grazing Advisory Boards to provide local advice and recommendations to BLM on grazing issues. The BLM Grazing Advisory Boards were "sunset" on December 31, 1985, by FLPMA. The 1995 grazing regulation amendments incorporated several requirements for BLM to consult, cooperate, and coordinate with BLM Resource Advisory Councils that were established in 1995 to advise and recommend strategies for managing public lands under the multiple-use mandate. The Resource Advisory Councils have generally assumed the role of the previous Grazing Advisory Boards and it would be duplicative and

unnecessary to establish another advisory body. Although the BLM does not consider the reestablishment of BLM Grazing Advisory Boards in this rulemaking, it is proposing a provision requiring BLM to cooperate with State, County, or locally established grazing boards in reviewing range improvements and allotment management plans on public lands. This review would supplement the advice of Resource Advisory Councils.

- **Changing management of wild horses and burros.** Some commenters identified the need to change how the BLM manages wild horses and burros as necessary to address rangeland health issues. Any changes to the Wild Horse and Burro Act or management regulations are, however, outside the authority and scope of this proposed rule.
- **Changing Conversion Ratio for Sheep for Billing Purposes.** Counting seven sheep, rather than the present five, as the equivalent of one animal unit for the purposes of calculating grazing fee billings was recommended by commenters during scoping. However, as indicated in the ANPR, matters involving grazing fees are outside the scope of this proposed rule.
- **Establishing "Reserve Common Allotments."** In the ANPR, the BLM identified that it was considering proposing provisions to define, establish a regulatory framework, and otherwise support the creation of Reserve Common Allotments. The BLM has decided not to proceed with developing Reserve Common Allotments at this time for several reasons. During the BLM's public scoping period, many commenters expressed concern about adding special provisions for Reserve Common Allotments in the grazing regulations. Many commenters said they did not think such regulatory provisions were warranted or necessary. Ranching interests indicated they would rather have "normal" allotments, whereas environmental interests questioned whether this would be the best use of the land. After considering the unenthusiastic reception to this concept, the BLM determined it was not in the public interest to proceed with this provision through regulations. The BLM will continue to examine the concept of forage reserves through policy making processes.
- **Assigning Burden of Proof.** Several commenters recommended that the BLM consider including a provision in the proposed rule requiring it to assume the burden of proof in an appeal before the Office of Hearings and Appeals. The Administrative Procedure Act (APA) at 5 U.S.C. 556(d) provides that "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." The burden of proof has recently been clarified by the Supreme Court to mean the "burden of persuasion," which refers to "the notion that if evidence is evenly balanced, the party who bears the burden of persuasion must lose." (Director, Office of Workers' Compensation Program v. Greenwich Collieries, 512 U.S. 267, 272 (1994)). Previously, the burden of proof had been confused with the burden of production, which refers to a party's obligation to come forward with evidence to support its claim. The burden of proving a fact remains where it started, but once the party with this burden establishes a prima facie case, the burden to produce evidence shifts. The burden of persuasion, on the other hand, does not shift except in the case of

affirmative defenses. The APA, as interpreted by the courts, establishes the burden of persuasion and it is not necessary to further treat this issue in these regulations.

- **Monitoring.** Few commenters directly addressed the definition of "monitoring" although many of the comments BLM received pertained to procedural matters; that is, recommendations on how BLM should conduct monitoring. The BLM received many comments from the livestock industry and environmental and conservation groups, asking BLM to increase monitoring efforts on public lands. The BLM considered including new language regarding monitoring intending to provide explicit direction on the development of allotment-specific resource management objectives and short- and long-term monitoring programs in consultation with the permittee or lessee. The present regulations already allow BLM to develop resource management objectives and monitoring plans as part of its allotment management plans. The BLM determined that establishing monitoring methodologies and working with permittees and lessees in collecting and interpreting data and developing monitoring reports are more appropriately handled through BLM's policy guidance in Manuals and Handbooks. The BLM did incorporate a requirement for using monitoring as a basis for rangeland health determinations (see proposed action).
- **Requiring Applications for Permit or Lease Renewals.** The present regulations do not explicitly state whether or not permittees or lessees must submit an application to BLM when their permit expires. Although there is no explicit requirement for an application when a permit expires, the actions involved in processing a renewal are the same as if there were an application, thus it was determined that the regulations did not have to be changed.
- **Providing for Appeals to the State Director.** During the scoping period, the BLM received comments recommending we consider adding another opportunity for administrative remedy by allowing a protesting party to appeal a BLM field office decision to the BLM State Director. Such a provision would allow the BLM State Director to have authority to stay a decision pending further review. The BLM determined it was not advisable to include this provision in the proposed rule as it did not meet BLM's objective of increasing administrative efficiency and effectiveness.
- **Redefining Affected Interest and Interested Public.** Some commenters urged BLM to remove the definition of interested public from the grazing regulations and incorporate the use of "affected interest" as it was defined in the regulations before 1995. Under such a change, the BLM would consider an "affected interest" to be a party who has expressed an interest in management of a specific allotment and that the BLM has determined to be an affected interest. This change would require that the BLM focus its limited resources on determining who is, and who is not, an affected interest. The BLM desires that meaningful public involvement in developing grazing-related resource management objectives or actions not be unduly restricted or hindered by BLM processes and procedures. In working with the interested public provisions of these regulations, the BLM has found that there are interested public who express initial interest in management of a grazing allotment but do not maintain

meaningful involvement in the process leading to creating allotment resource objectives and strategies to achieve those objectives. This proposed rule would modify the definition of interested public to provide that once a party becomes an interested public by expressing in writing an interest in management of an allotment, it maintains that status by continued participation in the decision-making process for that allotment. This modification would also narrow the circumstances in which BLM **must** involve the interested public before taking a management action. The BLM believes that these changes will maintain meaningful public involvement while streamlining BLM processes leading to day-to-day, on-the-ground grazing management decisions.

- **Providing for control of water developments authorized under a range improvement permit.** During the scoping period, the BLM received recommendations that the proposed regulations include provisions explicitly stating that the use of stock ponds, wells, and pipelines authorized under a range improvement permit should be controlled by the permittee or lessee holding the permit. The present rule does not allow for water developments under a range improvement permit. Other commenters asked that the BLM include in the proposed regulation a provision requiring that the permittee or lessee enter into a Memorandum of Understanding with the BLM to allow the use of improvements by livestock owned or controlled by anyone other than the permit holder. This is an administrative detail that is not appropriate for inclusion in a regulation.
- **Establishing criteria for full force and effect decisions.** Some commenters recommended that the BLM develop criteria for decisions implemented under Section 4110.3-3 for immediate implementation (i.e., full force and effect). The specific proposal was to use the same criteria as are applied to a request for a stay. The BLM disagrees that such criteria are necessarily relevant to the decision to issue a full force and effect decision to protect resources.
- **Modifying exchange of use agreements provisions.** The BLM received comments requesting that it remove the requirement that private lands offered in exchange of use be located in the same allotment being permitted for grazing to allow for "trade-of-use" arrangements such as that described below. A possible need for a trade-of-use arrangement, for example, is illustrated by the situation where one permittee or lessee owns or controls unfenced intermingled private lands that are not within his allotment, but are within a second permittee's allotment. Because the first permittee is not authorized to graze in the second permittee's allotment, the first permittee cannot derive economic gain from the grazing use made on his private lands by the second permittee, absent action to proactively control use of his land such as through fencing or through sale of the land or assignment of the land lease to the second permittee. The commentor urged that the BLM facilitate the trade-of-use between these permittee's by collecting a grazing fee from the second permittee for grazing use of lands owned by the first permittee but located in the second permittee's allotment, and by crediting the fees collected from the second permittee for these lands to the first permittee's grazing fee billing. The BLM does not agree that this type of arrangement is best handled through the regulation change suggested by the commentor.

- **Nonwillful unauthorized livestock use.** The BLM received comment urging that it modify the regulations to allow BLM to have unfettered discretion to determine circumstances that would warrant nonmonetary settlement of a nonwillful grazing trespass. The present regulations identify the following four conditions—all of which must be satisfied before BLM can approve a nonmonetary settlement for nonwillful unauthorized livestock use: evidence shows that the unauthorized use occurred through no fault of the livestock operator; the forage use is insignificant; the public lands have not been damaged; and nonmonetary settlement is in the best interest of the United States. The BLM believes this is a reasonable approach, and therefore has decided not to change this provision.
- **Eliminate Secretarial approval of amendments to regional standards for healthy rangelands.** The BLM received comments urging that it revise the process for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors, Resource Advisory Councils, and other advisory boards established by State or local governments. The BLM believes that the requirement for Secretarial approval of Standards developed by BLM State Directors ensures that the basic components of rangeland health are reflected by the regionally developed standards and is not proposing any changes to the applicable provisions of the regulations.
- **Locked gates.** Commenters were nearly unanimously opposed to the idea of the BLM allowing grazing operators to temporarily lock gates on public lands when necessary to protect private property or livestock. This provision was not considered further.
- **Requiring posting of a bond before filing an appeal.** The BLM received comments asking it to require a bond before a party filed an appeal. The BLM considered the implications and challenges to such a provision and has determined that this provision is not feasible. Therefore, it is not included in either the proposed rule or the EIS.
- **Fundamentals of Rangeland Health.** Some commenters recommended that the BLM move the general requirements related to the fundamentals of rangeland health and the standards and guidelines for grazing administration to BLM's planning regulations at 43 CFR 1610. The BLM did not consider the timing of such an action appropriate and therefore it is not included in either the proposed rule or the EIS.

2.5 COMPARISON OF THE ALTERNATIVES

**Table 2.5 Proposed Revisions to Grazing Regulations for the Public Lands
Comparison of Alternatives**

Improving Working Relationship with Permittees and Lessees			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Social, Economic and Cultural Considerations in the Decision-Making Process	* No provisions specifically address NEPA documentation of social, economic and cultural considerations in the regulations regarding changes in permitted use.	* A new provision would be added stating that before changing grazing preference, BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic and cultural effects of the proposed action.	* Same as Proposed Action
Implementation of Changes in Grazing Use	* The current regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	* Same as proposed action, except that the 5-year phase in of changes in use would be discretionary, i.e., change in active use in excess of 10% may be implemented over a 5-year period.
Range Improvement Ownership	* Under the current regulations, the United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	* Same as Proposed Action
Cooperation with State, Local, and County Established Grazing Boards	* Under current regulations, BLM is required to cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including State cattle and sheep sanitary or brand boards and County or other weed control districts.	* Under the proposed regulations, a requirement is added for the BLM to cooperate with State, local, or county established grazing boards in reviewing range improvements and allotment management plans on public lands.	* Same as Proposed Action

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Review of Biological Assessments and Evaluations	* Current rules do not specifically mention biological assessments or evaluations, however the current regulations require that BLM, to the extent practicable, provide affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease. This provision has been interpreted to include biological assessments.	* Biological assessments and biological evaluations prepared under the Endangered Species Act are specifically identified as reports that BLM would, to the extent practical, provide affected permittees or lessees, the state having lands or responsibility for managing resources within the area, and the interested public an opportunity to review and provide input during their preparation.	* Same as Proposed Action
Protecting the Health of the Rangelands			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Temporary Nonuse	* Grazing permittees or lessees may submit and BLM may approve an annual application for temporary non-use for no more than three (3) consecutive years. Reasons for temporary non-use include financial conditions or annual fluctuations of livestock.	* Grazing permittees or lessees could submit and BLM could approve non-use for no longer than one year at a time for resource reasons as well as for business/personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of non-use allowed).	* Same as Proposed Action except that permittees or lessees could submit and BLM could annually approve an application for nonuse for no more than five consecutive years.
Basis for Rangeland Health Determinations	* The current regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	* Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	* Same as proposed action except that BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment and/or monitoring.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Timeframe for Taking Action to Meet Rangeland Health Standards	* Under current regulations, the BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health	* Under the proposed regulations, where standards and guidelines have not been established,- BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health.	* Same as Proposed Action.
	* Current regulations state that upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement or documented decision, the BLM would implement appropriate action(s) as soon as practicable but not later than start of next grazing year.	* Same as Proposed Action.

Increasing Administrative Efficiency and Effectiveness			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Conservation Use	*Under the current regulations, conservation use is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary's authority under the Taylor Grazing Act.	* All references to and provisions on conservation use would be deleted.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition of Grazing Preference, Permitted Use, and Active Use	* In the current regulations, <u>grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.	* <u>Grazing preference or preference</u> would mean the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease .	* Same as Proposed Action.
	* In the current regulations, <u>permitted use</u> is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.	* The term <u>permitted use</u> would be dropped from the regulations and replaced with the term <u>grazing preference, preference or active use</u> , depending upon the context, throughout the regulations .	* Same as Proposed Action.
	* In the current regulations, <u>active use</u> means current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or a portion of an allotment.	* <u>Active use</u> would be redefined to mean that portion of the current authorized use which is available for livestock grazing based on rangeland carrying capacity and resource conditions in an allotment under a permit or lease and which is not in suspension.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public	* Under the current regulations, <u>interested public</u> is defined as an individual, groups or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.	* <u>Interested public</u> would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a decision for management of livestock grazing and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment , as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.	* Same as Proposed Action.
	* The BLM is required to consult, cooperate and coordinate with interested public on the following: • Designating/adjusting allotment boundaries. • Apportioning additional forage • Reducing permitted use • Emergency closures or modifications • Development or modification of grazing activity plan. • Planning of the range development or improvement program • Renewing/issuing grazing permit/lease • Modifying a permit/lease • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits.	* Requirements to consult, cooperate and coordinate with the interested public would be modified as follows: • Removed • Retained • Removed • Removed • Retained • Retained • Removed • Removed • Retained/Modified (added review on biological assessments/evaluations; removed specific reference to comment opportunity) • Removed	* Same as Proposed Action.
	* Under the current regulations, BLM is required to send copies of proposed and final decisions to the interested public.	* Same as existing regulations.	* Same as existing regulations.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Water Rights	* Current regulations state that any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	* The phrase – “on or after 8/21/95” - would be dropped from the first sentence. The second sentence of this provision - stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States - would be removed.	* Same as Proposed Action.
Satisfactory Performance of Permittee or Lessee	* Current regulations identify requirements for satisfactory performance for renewal of permits and leases and for new permits or leases.	* The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for new applicants – basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Changes in Grazing use Within Terms and Conditions of Permit or Lease	* The current regulations state that changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	* The proposed regulations would provide that BLM may authorize temporary changes in grazing within the terms and conditions of a permit or lease to respond to annual fluctuations in timing and amount of forage production; or to meet locally established range readiness criteria.	* Same as Proposed Action.
	* The current regulations do not include consultation requirements for such changes	*The BLM would consult with the permittee or lessee on such changes.	* Same as Proposed Action.
	* The current regulations do not define what is meant by “within terms and conditions of the permit or lease”.	* “Within terms & conditions” would be defined to mean temporary changes to livestock number, period of use, or both that would result in grazing use that results in forage removal that does not exceed the amount of active use specified in the permit or lease; and occurs either no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Service Charges	* A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement/supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the current regulations, however the current fee for these actions is \$10.	* Service charges would be specified as follows: Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50	* Same as Proposed Action.
Prohibited Acts	* There are 3 categories of acts which are prohibited on public lands.	* Same as existing regulations	* Same as existing regulations.
	* The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	* Same as existing regulations with several minor editorial changes and clarifications.	* Same as Proposed Action.
	* The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	* Same as existing regulations with some minor editorial changes.	* Same as the Proposed Action plus the following prohibited act would be added to this section: “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.”
	* The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	* Under the proposed regulation, the performance of prohibited acts in this third category would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	* Same as Proposed Action.
	* The third category consists of 3 sets of prohibited acts including: • specific laws or regulations (e.g., Endangered Species Act) • Federal or State laws	* Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: • specific laws or regulations (e.g., End. Species Act) • Federal or State laws

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
	pertaining to natural/ environmental/ cultural resources State laws related to livestock operations		pertaining to natural/ environmental/ cultural resources - deleted State laws related to livestock operations.
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	Under the current regulations, if a decision is stayed, the permittee or lessee will graze in accordance with the authorization issued the previous year. If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.	The provisions would be moved and editorial changes would be made to clarify these requirements. In addition, a provision would be added addressing the stay of a decision on a permit or lease offered to a preference transferee. If a stay is granted on a decision to modify or renew a permit or lease or to offer a permit or lease to a preference transferee, then the immediately preceding authorization would not expire, and grazing would continue under the immediately preceding authorization with the same terms and conditions therein.	* Same as Proposed Action.
Treatment of Biological Assessments & Evaluations in the Grazing Decision- Making Process	* Current regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA Blake decision, biological assessments are to be treated as decisions subject to protest and appeal.	* In the proposed regulations it would be stated that a biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal.	* Same as Proposed Action.

2.6 COMPARISON OF THE EFFECTS

Table 2.6 - Comparison of the Impacts Across Alternatives

Alternative 1	Alternative 2	Alternative 3
<i>Grazing Administration</i>		
*BLM grazing management would provide some partnership opportunities. *Mechanisms for assessing standards and changing grazing management would be rushed, discourage partnerships, and produce decisions of inconsistent quality. *Inconsistent documentation and consideration of social, economic and cultural effects of grazing decisions.	*BLM would promote greater partnership with grazing permittees, lessees, and grazing advisory boards. *Additional time would be allocated for developing appropriate action following a rangeland health determination. This would delay on-the-ground action but would lead to better, more comprehensive and acceptable decisions and would improve partnerships. *Additional consideration would be given to social, economic, and cultural impacts. *Monitoring data would support partnerships and sustainable decisions.	*Similar to Alternative 2 but with additional flexibility at the local level. *Allowing BLM discretionary authority for phase-in period instead of requiring 5-year time frame could provide additional protection for wildlife or other sensitive resources. *Allowing discretionary use of monitoring data for standards determinations rather than requiring it would allow BLM to focus on high priority allotments. *The provision allowing the requirement to use weed seed free forage, grain, straw or mulch would reduce the spread of noxious weeds.
<i>Vegetation</i>		
*Vegetative cover would increase slowly. *Timelines for management changes may limit vegetation management alternatives and partnerships. *Riparian vegetation would remain static or improve slightly.	*Vegetative conditions would move toward achievement of management objectives. *Potential for short-term adverse effects where vegetative recovery is delayed. *Additional resources would be invested in improvements due to partnerships and improved working relationships. *Riparian vegetation would remain static or improve slightly.	*Similar to Alternative 2 but flexibility in the use of monitoring for standards assessments and the timeframe for implementing management changes would allow BLM to focus on high priority allotments and accelerate short-term vegetative recovery. *Slower weed expansion rates than Alternative 1 or 2.
<i>Fire and Fuels</i>		
*A minimal effect on the ability to reach a more historical fire regime.	*A slight improvement in the ability to reestablish historical fire regimes resulting in vegetation improvements.	*Similar to Alternative 2.

<i>Soils</i>		
*Short-term adverse impacts would be minimal except at the local scale. *Would result in maintenance of or slight improvement in conditions in the long term.	*Short-term adverse impacts would be minimal except at the local scale. *Maintenance or slight improvement would be expected in the long-term due to watershed cover.	*Similar to Alternative 2.
<i>Water Resources</i>		
*The proposed changes would have little or no impact on short-term water resource conditions. *Slow improvement in watershed conditions would be expected for the long term. *Water quality would remain static or improve slowly.	*Similar to Alternative 1.	*Similar to Alternative 1 except the increase in weeds will be slower than Alternative 1.
<i>Air Quality</i>		
*Air quality would be expected to be maintained or improved and within standards.	*Similar to Alternative 1.	*Similar to Alternative 1.
<i>Wildlife</i>		
*Risks and benefits to wildlife and wildlife habitat, are not expected to change. *Current timeframes for developing grazing management changes would impede adequate analysis and consultation, thus resulting in less effective and acceptable decisions on wildlife.	*In the long run, there would be little or no effect on wildlife due to better partnerships with permittees and lessees and longer timeframes for developing effective and acceptable decisions. *Implementation of changes in grazing use and timeframes for taking action could have an adverse effect on wildlife in the short-term. *The elimination of the 3 consecutive year limit on temporary non-use could improve opportunities for cooperation to benefit wildlife resources.	*Changes in temporary non-use over current regulations from 3 to 5 consecutive years would slightly benefit wildlife. *More discretion for BLM managers in phasing in implementation of changes in grazing use would be beneficial to wildlife. * More discretion for BLM managers on the data to use for making rangeland health determinations could be beneficial to wildlife resources. *Reduction in spread of weeds would enhance wildlife habitat.
<i>Special Status Species</i>		
* Risks and benefits to special status species, are not expected to change *Effects similar to wildlife in Alternative 1.	*Little or no effect on special status species. *Effects similar to wildlife effects in Alternative 2	*Similar to wildlife effects in Alternative 3.

<i>Wild Horses and Burros</i>		
*Little change in wild horse and burro populations on public lands.	*Slight long-term positive impact from improved condition of the vegetation on habitat areas through an improved decision making process.	*Similar to Alternative 2.
<i>Recreation</i>		
*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved.	*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved. *Effects could be adverse in the short term if corrective actions are delayed.	*Similar impacts to alternative 2. *The reduction of weed expansion would have an additional benefit to recreation interests.
<i>Special Areas</i>		
*Little impact due to current good conditions.	*Little impact due to existing good conditions.	*Slight improvement of conditions on the long term due to reduction of weed expansion.
<i>Paleontological and Cultural Resources</i>		
*Heritage resources are protected through case-by-case, site specific surveys and analysis. *Prohibited act regarding removal or destruction of cultural resources may act as a deterrent.	*There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.	*Similar to Alternative 2 except removal of cultural damage prohibited act may have slight adverse impact.
<i>Economic Conditions</i>		
*Local/regional economic effects would be minor. *On-going effects include: 1) low flexibility; 2) lack of incentive to participate in range improvements; 3) lack of time to implement land health determinations; and 4) lack of cost recovery.	*Local/regional economic effects would be minor. *Primary effects would be: 1) Increased flexibility; 2) Increased BLM costs; 3) reduced adverse impacts on ranchers from herd reductions; 4) increased service charges for ranchers and increased cost recovery for BLM.	*Similar to Alternative 2. *Greater discretion for BLM managers in implementing changes in use and using monitoring data for land health determinations could have an adverse economic impact on ranchers.

<i>Social Conditions</i>		
Ranchers would continue to face increasing stress related to public land grazing. Ranchers would continue to sell ranches for amenity reasons and subdivision.	*Ranching, environmental and recreation interests perceive the monitoring requirements as being positive and believe this provision would provide beneficial social impacts. *Ranchers would experience beneficial social effects as a result of most provisions – particularly phasing in of implementation of changes, required cooperation with grazing boards, focusing water rights provision on following state law and providing more time for developing appropriate action following rangeland health determination. *Ranchers would experience negative social effects from the removal of the limit on consecutive years of nonuse – they perceive this as a form of conservation use and a threat to the economic and social viability of their communities. *Environmental groups would experience adverse social effects from the water rights provision change. *Social effects on environmental interest and recreation interests would generally be minimal or neutral for most of the other proposed revisions.	*There could be minimal social effects on ranchers and conservation groups due to BLM having discretion to use monitoring for rangeland health determinations. *Elimination of certain prohibited acts would have an adverse effect on conservation, environmental and recreation groups.
<i>Environmental Justice</i>		
*No disproportionate effects on low-income, minority, or tribal populations as a result of present regulations.	*Would not result in violation of environmental justice principles.	*Would not result in violation of environmental justice principles.

Draft EIS - Chapter 3

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3.0 AFFECTED ENVIRONMENT

Chapter 3 describes the physical, biological, social, and economic environment of the West that would be affected by the proposed action or alternatives. Prime and unique farmlands, floodplains, and hazardous and solid wastes have been determined as not being affected by the proposed action and are not discussed in this Draft EIS.

3.1 GENERAL SETTING

Bureau of Land Management land is grazed by livestock on 160 million acres of land in 15 States in the West, excluding Alaska. The area covered by this action is shown in Figure 1.1.

3.2 PHYSIOGRAPHIC SETTING

The physiographic setting is classified according and directly derived from Robert G. Bailey's ecoregion division classifications and descriptions for the United States (Bailey 1995, 1997). Bailey delineated ecoregions utilizing a scale based on macroclimates. Through consideration of macroclimatic conditions, in combination with the plant formations produced by the macroclimates, Bailey subdivided the United States into ecoregions composed of three levels of detail.

The broadest level of detail is reflected within the domain level. The two domain levels within the effected environment in the United States are delineated primarily by the related climate, for example, the humid domain versus the dry domain. Within the two domain levels in the affected environment, Bailey further delineated 6 divisions. These divisions are classified according to the seasonality of precipitation or the degree of dryness and cold. Corresponding climate diagrams that assist in explaining the division description can be found in Bailey 1998a and 1998b.

The 6 divisions are divided further into 13 providences and 6 mountain providences. The providence level provides the greatest level of detail. The organization of providences is mainly concentrated on the uniformity of climate subtypes and corresponding plant formations. Mountain environments that further characterized providences through altitudinal zonation compromise the mountain providences.

3.2.1 Marine

Situated on the Pacific coast between latitudes 40 ° and 60 ° N is a zone that receives abundant rainfall from maritime polar air masses and has a rather narrow range of temperatures because it borders on the ocean.

Trewartha (1968) classifies the marine west coast climate as Do—temperate and rainy, with warm summers. The average temperature of the warmest month is below 72 ° F (22 ° C), but at least 4 months per year have an average temperature of 50 ° F (10 ° C). The average temperature during the coldest month of the year is above 32 ° F (0 ° C). Precipitation is abundant throughout the year, but is markedly reduced during summer. Although total rainfall is not great by tropical standards, the lower air temperatures here reduce evaporation and produce a very damp, humid climate with much cloud cover. Mild winters and relatively cool summers are typical. Coastal mountain ranges influence precipitation markedly in these middle latitudes. The mountainous coasts of British Columbia and Alaska annually receive 60 to 80 inches (1,530 to 2,040 mm) of precipitation and more. Heavy precipitation greatly

contributed to the development of fiords along the coast—heavy snows during the glacial period fed vigorous valley glaciers that descended to the sea, scouring deep troughs that reach below sea level at their lower ends.

Natural vegetation in the Marine Division is needleleaf forest. In the coastal ranges of the Pacific Northwest, Douglas-fir, red cedar, and spruce grow to magnificent heights, forming some of the densest of all coniferous forests with some of the world's largest trees.

Soils are strongly leached, acid Inceptisols and Ultisols. Because of the region's low temperatures, bacterial activity is slower than in the warm tropics, so vegetative matter is not consumed and forms a heavy surface deposit. Organic acids from decomposing vegetation react with soil compounds, removing such bases as calcium, sodium, and potassium.

3.2.2 Mediterranean

Situated on the Pacific coast between latitudes 30 ° and 45 ° N is a zone subject to alternate wet and dry seasons, the transition zone between the dry west coast desert and the wet west coast.

Trewartha (1968) classifies the climate of these lands as Cs, signifying a temperate, rainy climate with the dry, hot summers indicated by the symbols. The combination of wet winters with dry summers is unique among climate types and produces a distinctive natural vegetation of hardleaved evergreen trees and shrubs called sclerophyll forest. Various forms of sclerophyll woodland and scrub are also typical. Trees and shrubs must withstand the severe summer drought (2 to 4 rainless months) and severe evaporation.

Soils of this Mediterranean climate are not susceptible to simple classification. Alfisols and Mollisols typical of semiarid climates are generally found.

3.2.3 Tropical-Subtropical Steppe

Tropical steppes border the tropical deserts on both the north and south, and in places on the east as well. Locally, because of altitude, plateaus and high plains within what would otherwise be desert have a semiarid steppe climate. Steppes on the poleward fringes of the tropical deserts grade into the Mediterranean climate in many places. In the United States, they are cut off from the Mediterranean climate by coastal mountains that allow tropical deserts to extend farther north.

Trewartha (1968) classifies the climate of tropical–subtropical steppes as BSh, indicating a hot, semiarid climate where potential evaporation exceeds precipitation, and where all months have temperatures above 32 ° F.

Steppes typically are grasslands of short grasses and other herbs, and with locally developed shrub- and woodland. On the Colorado Plateau, for example, there is pinyon–juniper woodland. To the east, in Texas, the grasslands grade into savanna woodland or semideserts composed of xerophytic shrubs and trees, and the climate becomes semiarid–subtropical. Cactus plants are present in some places. Soils are commonly Mollisols and Aridisols, containing some humus.

3.2.4 Tropical-Subtropical Desert

South of the Arizona–New Mexico mountains are the continental desert climates, which are arid with high air and soil temperatures. Direct sun radiation is strong, as is outgoing radiation at night, causing large variations between day and night temperatures and a rare nocturnal frost. Annual precipitation ranges from 4 to 8 inches. These areas have climates that Trewartha (1968) calls BWh.

The region is characterized by dry-desert vegetation, a class of xerophytic plants that are widely dispersed and provide negligible ground cover. In dry periods, visible vegetation is limited to small, hard-leaved or spiny shrubs, cacti, or hard grasses. Many species of small annuals may be present after rains have saturated the soil.

In the Mojave–Sonoran Deserts (American Desert), plants are often so large that some places have a near-woodland appearance. Well known are the treelike saguaro cactus, the prickly pear cactus, the ocotillo, creosote bush, and smoke tree. But much of the desert of the southwestern United States is in fact scrub, thorn scrub, savanna, or steppe grassland. Parts of this region have no visible plants; they are made up of shifting sand dunes or almost sterile salt flats.

A dominant pedogenic process is salinization, which produces areas of salt crust where only salt-loving (halophytic) plants can survive. Calcification is conspicuous on well-drained uplands, where encrustations and deposits of calcium carbonate (caliche) are common. Humus is lacking and soils are mostly Aridisols and dry Entisols.

3.2.5 Temperate Steppe

Temperate steppes are areas with a semiarid continental climatic regime in which, despite summer rainfall, evaporation usually exceeds precipitation. Trewartha (1968) classifies the climate as BSk; the letter k signifies a cool climate with at least 1 month of average temperatures below 32 ° F (0 ° C). Winters are cold and dry, summers warm to hot. The vegetation is steppe, sometimes called shortgrass prairie, and semidesert. Typical steppe vegetation consists of numerous species of short grasses that usually grow in sparsely distributed bunches. Scattered shrubs and low trees sometimes grow in the steppe; all gradations of cover are present, from semidesert to woodland. Because ground cover is generally sparse, much soil is exposed. Many species of grasses and other herbs occur. Buffalo grass is typical of the American steppe; other typical plants are the sunflower and locoweed.

The semidesert cover is xerophytic shrub vegetation accompanied by a poorly developed herbaceous layer. Trees are generally absent. An example of semidesert cover is the sagebrush vegetation of the middle and southern Rocky Mountain region and the Colorado Plateau.

In this climatic regime, the dominant pedogenic process is calcification, with salinization on poorly drained sites. Soils contain a large excess of precipitated calcium carbonate and are very rich in bases. Mollisols are typical in steppe lands. The soils of the semidesert shrub are Aridisols with little organic content, pedogenic and (occasionally) clay horizons, and (in some places) accumulations of various salts. Humus content is small because the vegetation is so sparse.

3.2.6 Temperate Desert

Temperate deserts of continental regions have low rainfall and strong temperature contrasts between summer and winter. In the intermountain region of the western United States between the Pacific coast and Rocky Mountains, the temperate desert has characteristics of a sagebrush (*Artemisia*) semidesert, with a pronounced drought season and a short humid

season. Most precipitation falls in winter, despite a peak in May. Aridity increases markedly in the rain shadow of the Pacific mountain ranges. Even at intermediate elevations, winters are long and cold, with temperatures falling below 32 ° F (0 ° C).

Under the Koppen-Trewartha system, this is true desert, BWk. The letter k signifies that at least 1 month has an average temperature below 32 ° F (0 ° C). These deserts differ from those at lower latitudes chiefly in their far greater annual temperature range and much lower winter temperatures. Unlike the dry climates of the tropics, dry climates in the middle latitudes receive part of their precipitation as snow.

Temperate desert climates support the xerophytic shrub vegetation typical of semidesert. One example is the sagebrush vegetation of the Great Basin and northern Colorado Plateau. Soils of the temperate desert are Aridisols low in humus and high in calcium carbonate. Poorly drained areas develop saline soils, and dry lake beds are covered with salt deposits.

3.3 Drought

Drought is a temporary component of climate; it differs from aridity, which is restricted to ecosystems where low rainfall is a permanent feature of climate. On the majority of rangelands managed by the BLM, it is not a question of if drought will occur, but rather when it will occur and how long will it persist.

During drought, the quantity of moisture drawn from storage by transpiration increases, reducing soil moisture early in the growing season. This is reflected in lower water levels in shallow wells and in deep wells subject to recharge in the drought area. High temperatures aggravate the situation by increasing transpiration and evaporation requirements.

During drought, low soil moisture levels limit plant growth. Further, root growth is limited, making plants less able to extract scarce soil moisture. Litter, the dead portion of the previous season's plant growth, insulates soils and thus reduces evaporative water loss, which provides more moisture for plant growth.

Many areas of the West have been experiencing mild to severe drought conditions since 1999.

3.4 GRAZING ADMINISTRATION

Excluding Alaska, the BLM administers about 160 million acres within grazing allotments. Congressional authority and direction expressed through laws authorize or affect the BLM grazing administration on these allotments. These authorities primarily include the Taylor Grazing Act of June 30, 1934, as amended; the Federal Land Policy and Management Act of 1976; and the Public Rangelands Improvement Act of 1978.

The Department of Interior Code of Federal Regulations (CFR), BLM manuals and manual handbooks, Instruction Memorandums, Information Bulletins, and the Interior Board of Land Appeal orders and decisions further guide the BLM's grazing administration program. The CFR are the regulations that the Department of Interior establishes to carry out the laws enacted by the legislative branch. The regulations that govern grazing administration (excluding Alaska) are contained within 43 CFR Part 4100 Grazing Administration—Exclusive of Alaska.

The grazing administration program includes the issuing of permits, leases, and annual grazing licenses; billings and collections of grazing fees; inspections to verify that permittees and lessees are in compliance with the terms and conditions of their permits; leases, authorizations, and Federal regulations; preparing land use and activity plans; identifying and

planning rangeland improvement projects; obtaining livestock management agreements; reviewing base property for compliance; conducting vegetative monitoring studies; and evaluating whether grazing management is achieving objectives.

3.4.1 Issuing, Modifying, or Renewing Permits or Leases

From 1999 through 2002, the BLM issued 13,098 grazing permits and leases, some in accordance with the Annual Appropriation Act. During the same time period, the BLM processed 10,026 permits. The permits issued include the permits processed. Some of the permits issued were issued because of transfers of preference, rangeland health assessments, or other actions that may result in a new permit being generated. The future projections indicate that the BLM will process 8,015 grazing permits and leases in the next 5 years (2003–2007).

For each of the permits or leases issued in which there was a change in management (i.e., duration of use, class of livestock, numbers of livestock, or season of use), the BLM analyzes the effects according to the NEPA process. The critical environmental elements are analyzed to document whether an effect occurred or did not occur to the element. While NEPA guidelines contain the process for analysis, the grazing regulations contain no context to the NEPA requirements for permit or lease actions, or specify any additional critical elements that must be analyzed prior to the issuance of a permit or lease. Changes in grazing management require coordination with the grazing permittee or lessee, State having lands or responsibility for managing resources within the area, and interested public, and often involve consultation under the Endangered Species Act.

A grazing permit or lease specifies permitted use (subpart 4110.2-2). Permitted use is granted to qualified holders of grazing preference. Permitted use shall include active use, any suspended use, and conservation use. The animal unit months (AUMs) of permitted use are attached to the base property.

3.4.2 Implementing Changes in Grazing Use

The BLM may modify the terms and conditions of the permit or lease (subpart 4130.3) when needed to manage, maintain, or improve rangeland productivity; assist in restoring ecosystems to properly functioning condition; conform with land use plans or activity plans; or comply with the provisions of Subpart 4180 (Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration). These changes are supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer. Additional forage available on a sustained yield basis may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives. The authorized officer will consult, cooperate, and coordinate with the affected permittees or lessees; the State with lands or managing resources within the area; and the interested public (subpart 4110.3-1). When monitoring or field observations show grazing use or patterns of use are not consistent with provisions in subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce use or otherwise modify management practices (subpart 4130.3-2).

After consultation, cooperation, and coordination with the affected permittees or lessees; the State with lands or managing resources within the area; and the interested public; changes to permitted use shall be implemented through a documented agreement or decision (subpart 4110.3-3). Decisions shall be issued as proposed decisions, as described in subpart 4160.1, unless the authorized officer determines that resources on the public lands require immediate

protection due to catastrophic events (flood, fire, or insect infestations) or when continued grazing use poses an imminent likelihood of significant resource damage. In this instance, after at least a reasonable attempt to consult with the above-mentioned parties, the authorized office shall close all or a portion of an allotment or require modification of authorized grazing by issuing a final decision, which becomes effective upon issuance or on a date specified in the decision (subpart 4110.3-3(b)).

Most reductions to permitted use greater than 10% were made prior to the late 1980s. Since that time, most changes to grazing use involve changes to season of use or duration, and not livestock numbers.

3.4.3 Range Improvements

The BLM cooperates in planning and financial partnership with permittees or lessees in the construction and maintenance of range improvement projects. Range improvements are "authorized physical modifications or treatments...designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife." (43 CFR 4100.0-5). Typical range improvements include fences, well, reservoirs, seedings, and corrals.

BLM uses two instruments to authorize range improvements and provide for maintenance of structural improvements. The Cooperative Range Improvement Agreement (CRIA) is used to authorize permanent improvements, and may be used by any person, organization or other government agency to share costs for constructing the improvement. Costs contributed by each party are documented in the CRIA. Title to permanent structural improvements constructed since 1995 is held by the United States. Title to these types of improvements constructed prior to 1995 is held jointly between the cooperators. Title to all nonstructural improvements is held solely by the United States.

The Range Improvement Permit (RIP) allows livestock permittees and lessees to construct or place removable improvements on public land. The permittee or lessee may hold title to the improvement if it is a livestock handling facility such as a corral, creep feeder, loading chute, or temporary water trough. Prior to 1995, the permittee could also hold title to other removable structures (e.g., fences, corrals) authorized by a RIP.

The three major changes to BLM range improvement construction policy made by the 1995 rules change are:

- All permanent water developments must be authorized under a CRIA
- Title to all permanent structural improvements are in the name of the United States rather than being shared with the cooperator in proportion to their contribution
- The permittee or lessee can hold title to a range improvement authorized by a RIP only if it is a livestock handling facility.

From 1982 to 1994, the BLM authorized 25,280 rangeland improvement projects under a CRIA or RIP; an average of 1,945 improvements per year. From 1995 to 2002, the BLM authorized 9,684 rangeland improvement projects, an average of 1,210 per year. The decrease in the number of range improvements constructed each year is attributable to a number of factors, including decreasing availability of public funds and shifting BLM work priorities. The 1995 change in CRIA title provisions may also have been a factor in the decrease. Table 3.4.3.1 provides the number of rangeland improvement projects by State and year.

3.4.4 Involvement of Interested Publics

The grazing administration program includes a definition for the involvement of interested publics in the decision-making process. The regulations define interested publics as an individual, group, or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on a specific allotment or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment (subpart 4100.0-5). Within the present regulations, the interested public may decline to participate in the preliminary decision making process (i.e., formulation of a proposed grazing decision), but at a later date may become involved in the final decision making process (Appeals, subpart 4160.4). In addition, the grazing regulations specify that the BLM will cooperate, within the applicable laws, with State, County, or Federal agencies in regard to the administration of laws and regulations related to State cattle or sheep sanitary or brand boards and County or other local weed control districts (subpart 4120.5-2).

The BLM is required to consult, cooperate, and coordinate or seek review from the interested publics on the following actions:

1. Designating and adjusting allotment boundaries,
2. Increasing active use,
3. Implementing reductions in in permitted active use,
4. Emergency closures or modifications to grazing use,
5. Development or modification of allotment management plans,
6. Planning (NEPA) of the range development or improvements,
7. Issuing grazing permits or leases,
8. Modification a permits or leases,
9. Reviewing or commenting on grazing evaluation reports, and
10. Issuing temporary, nonrenewable grazing permits or leases

3.4.5 Authorizing Temporary Changes in Use

In 2002, there were 18,142 grazing permits or leases on lands administered by the BLM. Grazing permits and leases are normally issued for a 10-year term, but in some circumstances may be issued for less, (e.g., rule of law, estate rules, and base property lease; subpart 4130.2). In 2002, 12.7 million Animal Unit Months (AUMs) were available for use, with 7.9 million AUMs authorized as active use and 4.8 million AUMs authorized as temporary nonuse or conservation use. (Table 3.4.5.1)

Temporary nonuse is typically requested by a permittee or lessee for convenience (such as for personal or financial reasons) and resource management. The permittee or lessee may apply for temporary nonuse for as long as 3 years, and the BLM has the discretion to accept or reject the application for nonuse. However, the BLM may use other methods to provide longer periods of rest from grazing (nonuse), for example, permittee or lessee mutual agreements, allotment closures, suspension through grazing decisions, and others, to achieve a variety of resource or vegetative objectives. This nonuse is not at the request of the

permittee or lessee. Examples of this type of nonuse may be for post-wildfire rehabilitation, drought, prescribed fire management, riparian area recovery, or other reasons.

A permittee or lessee may apply for changes in permitted use that is maintained within the terms and conditions of the permit and the BLM may approve the application. The regulations do not address what is meant by "within the terms and conditions of the permit." If the application for changes in use is received after the billing notice has been issued, the permittee or lessee would be subject to a service charge.

3.4.6 Prohibited Acts

The authorized officer has the ability to withhold issuance, suspend, or cancel a grazing permit or lease in whole or part, a free-use permit, or any other grazing authorization if a grazing permittee or lessee violates any of the provisions listed in prohibited acts (§4140.1). These prohibited acts are classified under three sections within the grazing regulations.

In general, the first set of prohibited acts states that permittees and lessees who perform the prohibited acts listed under subsection 4140.1(a) may be subject to civil penalties (e.g., cancellation of permit or lease in whole or part). Included in the list of prohibited acts under section (a), for example, are: "violating special terms and conditions incorporated in permits or leases"; "unauthorized leasing or subleasing"; and "failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits." This first section of prohibited acts is a major vehicle used by BLM to address grazing violations or to take direct action against permittees or lessees who are violating terms and conditions or their grazing permit or lease.

The second set of prohibited acts classified under §4140.1(b) applies to any persons (not just permittees or lessees) performing the prohibited acts included in this subsection. Anyone who violates these prohibited acts is subject to civil and criminal penalties. Included in this list are actions such as "allowing livestock....to graze on [BLM-administered] lands...without a permit or lease"; "damaging or removing U.S. property without authorization"; "molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent"; "littering"; and "interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates."

The third set of prohibited acts is included within §4140.1(c). Performance by a permittee or lessee of any of these prohibited acts is subject to civil penalties. However, there is an important distinction between these prohibited acts and those identified in the first two sets. Violations of these acts are subject to civil penalties if the following four conditions are met:

1. public land is involved or affected,
2. the violation is related to grazing use authorized by a BLM-issued permit or lease,
3. the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of these laws, and
4. No further appeals are outstanding.

The BLM has been unable to find an instance in which the BLM has utilized the third set of prohibited acts to take an adverse action against or penalize a BLM permittee or lessee.

3.4.7 Appeals

In order to provide permittees, lessees, and others an opportunity to communicate on BLM's grazing actions, the grazing administrative process contains a decision process that includes opportunities for public input. In general, the BLM issues a proposed grazing decision in which the interested publics and the permittee or lessee have 15 days to protest the proposed decision. If no protests are received by the authorized officer, the proposed grazing decision automatically becomes the final grazing decision. The final decision contains a 30-day appeal period upon receipt.

If the interested public or the permittee or lessee protest the proposed decision, the authorized officer must review the protest and either address or dismiss the protest rationale within the final grazing decision. The interested public or the permittee or lessee may appeal the final decision to the Office of Hearing and Appeals and request a stay of the decision. If a stay is granted, the decision is usually suspended pending the Office of Hearings and Appeals final determination. If a stay is denied, the final grazing decision is in force until the Office of Hearings and Appeals final determination.

This process is used within the permit or lease transfer process. For example, a permittee or lessee appeals a final decision concerning the grazing season on a permit or lease and a stay of the final decision is granted. The permittee or lessee must graze in accordance with the previous permit. If the permittee or lessee is a new applicant for the allotment and therefore has no previous permit for the allotment, the applicant must graze in accordance with the final decision.

3.4.8 Rangeland Health

Over time, many terms have been used to describe rangeland condition. The term "health" gained acceptance when the National Research Council used the term in the title of its 1994 report, *Rangeland Health—New Methods to Classify, Inventory, and Monitor Rangelands*. Although this was not the first time "health" was used to describe rangeland condition, it was the first time the term was applied in a broad sense and made available for the general public in a book published for nontechnical audiences.

In an effort to provide a definition for rangeland health that multiple audiences could understand and accept, a working task force composed of research institutions, Federal agencies, and private organizations met in 1995 to develop standardized definitions for range management terms. The task force defined rangeland health as "the degree to which the integrity of the soil, vegetation, water, and air, as well as the ecological processes of the rangeland ecosystem, are balanced and sustained. Integrity is defined as maintenance of the structure and functional attributes characteristic of a locale, including normal variability (SRM 1999)."

Whereas the soil, vegetation, water, and air are visible components of rangeland health, several essential ecological processes are often overlooked as important factors that contribute to rangeland health. The ecological processes include the water cycle (the capture, storage, and redistribution of precipitation), energy flow (conversion of sunlight to plant and animal matter), and nutrient cycle (the cycle of nutrients through the physical and biotic components of the environment; Pellant 2000). Within normal variation, these ecological processes will enable a rangeland to support a specific plant community.

If the ecological processes control the plant community, then management should concentrate

on ecological processes to evaluate if rangeland is healthy, since ecological processes determine the composition of the plant community (Pellant 2000; Stringham 2003). Once one of the ecological processes has deteriorated past the point of self-repair, the rangeland no longer meets the definition of a healthy rangeland. Managing to maintain stable ecological processes within the plant community contributes to overall rangeland health.

The grazing regulation changes in 1995 initiated the implementation for assessment of allotments for conformance to the standards for rangeland health. In general, these regulations specify that allotments must meet certain standards for rangeland health. The determination of whether an allotment meets or does not meet the standards for rangeland health is formulated through an allotment assessment and, if available, historical monitoring data.

When an allotment does not meet one of the standards for rangeland health and livestock grazing is a significant factor for the standard not being met or for non-conformance with a guideline, the grazing regulation directs the authorized officer to ensure that some type of action (e.g., grazing plan, noxious weed treatment, or another action) is implemented before the start of the next grazing season.

At the conclusion of fiscal year 2002, the BLM had assessed 7,437 allotments (58,711,307 acres) of BLM lands. The BLM concluded that 5,671 allotments (32,332,345 acres) met all the standards for rangeland health. The remaining 1,766 allotments (26,378,962 acres) did not meet one or more of the standards. Of the 1,766 allotments, livestock was the causal factor for 1,213 allotments not meeting standards resulting in BLM initiating appropriate action to make significant progress toward fulfillment of standards and conformance with the guidelines.

3.5 VEGETATION

The dominant vegetation within the affected environment exists on a type of land that is referred to as rangeland. Rangeland is classified as an area where the natural vegetation is dominated by grasses, forbs, and shrubs and the land is managed as a natural ecosystem (SRM 1999). In addition to providing forage for livestock and wildlife, rangelands also provide clean air, high quality water, habitat for native plant species, open space, and recreational opportunities.

Vegetation Types

The classification of vegetation types within the affected environment are displayed in Table 3.5.1. The map units in Figure 3.5.1 represent the subclass level of Table 3.5.1. These vegetation types were selected due to their consistency with the Federal Geographic Data Committee and the National Vegetation Classification Standard. The plant communities contained within the 14 vegetation types are listed in Table 3.5.2.

Evergreen Forests

Evergreen forests are a tree dominated landscape. The canopy of the trees has overlapping crowns generally forming 60 to 100% of the vegetative cover. In the evergreen forests subclass the evergreen species contribute greater than 75% of the total tree cover.

Deciduous Forest

Deciduous forests are a tree dominated landscape. The canopy of the trees has overlapping crowns generally forming 60 to 100% of the vegetative cover. In the deciduous forests subclass the deciduous species contribute greater than 75% of the total tree cover.

Mixed Evergreen-Deciduous Forests

Mixed evergreen–deciduous forests are a tree dominated landscape. The evergreen and deciduous species each generally contribute 25 to 75% of the total tree cover. This would include semideciduous, semievergreen, mixed evergreen–deciduous xeromorphic and mixed needle-leaved evergreen-cold deciduous woody vegetation.

Evergreen Woodland

Evergreen woodland is a tree dominated landscape. The area is classified as open stands of trees with crowns not usually touching. The trees generally form 25 to 60% of the vegetative cover. There are instances when tree cover may be less than 25% in cases when the cover of each of the other life forms present (i.e. shrub, dwarf shrub, herb, nonvascular) is less than 25% and tree cover exceeds the cover of the other life forms. Evergreen species contribute greater than 75% of the total tree cover.

Deciduous Woodland

Deciduous woodland is a tree dominated landscape. The area is classified as open stands of trees with crowns not usually touching. The trees generally form 25 to 60% of the vegetative cover. There are instances when tree cover may be less than 25% in cases when the cover of each of the other life forms present (i.e. shrub, dwarf shrub, herb, nonvascular) is less than 25% and tree cover exceeds the cover of the other life forms. Deciduous species contribute greater than 75% of the total tree cover.

Mixed Evergreen–Deciduous Woodland

Mixed evergreen–deciduous woodland is a tree dominated landscape. The area is classified as open stands of trees with crowns not usually touching. The trees generally form 25 to 60% of the vegetative cover. There are instances when tree cover may be less than 25% in cases when the cover of each of the other life forms present (i.e., shrub, dwarf shrub, herb, nonvascular) is less than 25% and tree cover exceeds the cover of the other life forms. Evergreen and deciduous species contribute 25 to 75% of the total tree cover. This would include semideciduous, semievergreen, mixed evergreen–deciduous xeromorphic and mixed needle-leaved evergreen-cold deciduous woody vegetation.

Evergreen Shrubland

Evergreen shrubland is a shrub dominated landscape. The shrubland classification has shrubs greater than 0.5 meters tall with individuals or clumps not touching to overlapping. The shrub component generally forms greater than 25% of the canopy cover. The tree cover is generally less than 25%. Shrub cover may be less than 25% in cases where each of the other life forms present is less than 25% and the shrub cover exceeds the other life forms. The evergreen shrub species contribute greater than 75% of the total shrub cover.

Deciduous Shrubland

Deciduous shrubland is a shrub dominated landscape. The shrubland classification has shrubs greater than 0.5 meters tall with individuals or clumps not touching to overlapping. The shrub component generally forms greater than 25% of the canopy cover. The tree cover is generally less than 25%. Shrub cover may be less than 25% in cases where each of the other life forms present is less than 25% and the shrub cover exceeds the other life forms. The evergreen shrub species contribute greater than 75% of the total shrub cover.

Evergreen Dwarf Shrubland

There are no examples of evergreen dwarf shrublands on BLM lands.

Deciduous Dwarf Shrubland

Vegetation types included within the deciduous shrubland subclass are located in Alaska and are not within the affected environment.

Perennial Graminoid

A perennial graminoid area is dominated by at least 25% of the total vegetative cover formed of perennial graminoids. Trees, shrubs, and dwarf-shrubs form less than 25% of the total vegetative cover. Perennial graminoid cover may be less than 25% of the total vegetative cover, but it will still exceed the total vegetative cover of other life forms.

Annual Graminoid or Forb

An annual graminoid or forb area is dominated by at least 25% of the total vegetative cover formed of annual graminoid or forb. Trees, shrubs, and dwarf-shrubs form less than 25% of the total vegetative cover. Annual graminoid or forb cover may be less than 25% of the total vegetative cover, but it will still exceed the total vegetative cover of other life forms. Vegetation types included within the annual graminoid or forb subclass are:

Perennial Forb

A perennial forb area is dominated by at least 25% of the total vegetative cover formed of perennial forb. Trees, shrubs, and dwarf-shrubs form less than 25% of the total vegetative cover. Perennial forb cover may be less than 25% of the total vegetative cover, but it will still exceed the total vegetative cover of other life forms. Vegetation types included within the perennial forb subclass are

Riparian-Wetland

Various definitions of riparian-wetlands exist in the publications. In general, the riparian-wetland subclass is highly influenced by the presence of water in the form of flowing rivers, streams, creeks, groundwater or in the form of standing water as in reservoirs, bogs, and pits. Vegetation types within riparian-wetland areas would include wet graminoids and wet forbs.

Other

Other is largely classified as private farm lands and is not within the affected environment.

BLM Vegetation Management

BLM's goal is to manage the public lands on a multiple-use and sustained yield basis. Among the uses and values of the vegetation are forage for livestock and wildlife. Land use plans may provide broad vegetation management objectives. More specific management objectives are found in activity plans. For example, grazing allotment management plans generally contain vegetation management objectives.

In this document, the rangeland vegetation is divided into upland and riparian sections.

3.5.1 Upland Vegetation

Vegetation on the public lands can be described and evaluated in many ways. In the early 1900s, the rangeland management field was undergoing a formation of theories for the understanding of how vegetation responds to introduced activities, such as livestock grazing, and natural disturbances, such as fire. In 1916 Clements introduced the theory that rangeland has a single persistent state, "the climax" (Clements 1916). This theory is referred to as the Clementsian theory of range succession and became widely embraced within the ecological field.

The Clementsian theory provides a linear nature of vegetation succession. According to Stoddard, Smith, and Box (1975), this "retrogression may be caused by drought, fire, or grazing. If this action is temporary, a succession leading back to climax follows." In other words, once a disturbance such as grazing was removed from an area, that area would return

to the vegetative community that existed before the disturbance.

In 1949, Dyksterhuis utilized the principles of the Clementsian theory to classify the condition of rangeland. This rangeland condition classification and succession process relied on comparing the present vegetation of an area to the vegetation that was thought to be original to the site, referred to as the "climax vegetation" (Dyksterhuis 1949). Using the climax vegetation at the pristine condition, Dyksterhuis proposed classifying rangeland as excellent (climax vegetation), good, fair, or poor.

The Dyksterhuis range succession model was adopted worldwide to provide the framework for the management of rangelands. But over time researchers and land managers recognized that the Clementsian theory and the Dyksterhuis range condition model did not adequately describe the ecological situation that exists in arid and semiarid rangelands. These arid and semiarid rangelands were not returning to the original vegetative community once a disturbance was removed from the system.

Westoby et al. (1989) introduced the state-and-transition model that provided the framework for modeling the vegetative changes occurring on arid and semiarid regions. The main departure from the Clementsian theory was that arid or semiarid rangelands may never return to the original vegetative community once a disturbance is removed. The framework they provided allowed for states, "an abstraction encompassing a certain amount of variation in space and time" and transitions "the movement between states".

Freidel (1991) added to the state-and-transition model by envisioning that once a threshold is crossed a new state is formed, and without intensive inputs, a return to the original state is not possible. Additional research and comments (Laycock 1991; Tauch et al. 1993; Iglesias and Kothmann 1997; Stringham 2003; and Bestelmeyer 2003) provided additional refinement and illustrated applications of the state-and-transition model.

A state-and-transition model for arid and semiarid rangeland contains state, transitions, and threshold definitions:

- State—A variety of vegetative communities that are a function of the soil complex and the vegetative community that inhabits the complex (Stringham et al. 2003).
- Transition—A change from the present stable state that is triggered by natural events, management actions, or both (Stringham et al. 2003). A transition can be:
 - Reversible if it occurs within the state and it is possible to return the existing vegetative community back to the original vegetative community without large inputs and is in managerial timeframe
 - Irreversible if the transition crosses a threshold where it is impossible to return to the original vegetative community without large inputs of energy.
- Threshold—A point in space and time at which a state is no longer able to maintain its present condition. Once this threshold is crossed a new state is formed and it is not possible to revert back to original state without significant inputs.

With the incorporation of the additional information, state-and-transition models were and are presently being refined to provide an accurate description of how upland vegetation responds to management activities or natural disturbances. Figure 3.5.1.1 illustrates how a state-and-transition model would be applied to upland vegetation.

Condition and Trends

The vegetation on the public lands is a dynamic, living system that changes over time. As mentioned above, how to assess the condition of vegetation has also changed over time.

However, since 1934 the public lands have had managed livestock grazing and conditions have continued to improve. Although conditions have improved, there are still a number of acres that are dominated by brush species or exotic species and have not returned to the potential natural community.

The BLM National Rangeland Inventory reporting system is based on a vegetative condition rating by comparing percent composition, by weight and species, of the existing vegetation to the potential natural plant community that the site can produce. The 2002 Rangeland Inventory reflects the following:

Potential Natural Community—6%

Late Seral—31%

Mid Seral—34%

Early Seral—12%

Unknown or Unclassified—17%

Monitoring and data collection that are used to determine upland conditions are also used to formulate the trend for the upland vegetation. Trend is classified as up, static, down, or undetermined. An "up" trend rating is correlated with the upland vegetation progressing toward the potential natural community. A downward trend is correlated with the upland vegetation moving away from the potential natural community. Static trend is classified as the vegetation not moving away from or toward the potential natural community for the upland vegetative communities. The national trend from the 2002 National Rangeland Inventory for vegetation is:

Up—21%

Static—51%

Down—12%

Undetermined—16%

3.5.2 Riparian and Wetland Vegetation

Riparian areas are highly productive and unique wetland environments that are found adjacent to rivers and streams. Riparian communities are often referred to as "ribbons of green" in the arid Western United States. Though estimates vary, it is generally agreed that riparian ecosystems comprise less than 1% of the surface area in the 11 western States (Cooperrider et al. 1986; Ohmart 1996). Riparian communities in the Western United States are the most productive habitats in North America (Johnson et al. 1977), and provide important wildlife habitat for breeding, wintering, and migration. An estimated 75% of the vertebrate species in Arizona and New Mexico depend on riparian habitat for some portion of their life history (Johnson et al. 1977).

Riparian areas combine the presence of water, increased vegetation, shade, and a favorable microclimate to create the most biologically diverse habitat found on BLM lands. Riparian areas are highly prized for their recreation, fish and wildlife, water supply, and cultural and historic values, as well as for their economic values related to livestock production, timber harvest, and mineral extraction (BLM 1998). In the semiarid West, healthy functioning riparian areas perform several critical functions:

- Improve water quality through filtering and sediment removal

- Stabilize streambanks
- Soil retention
- Dissipate stream energy during high flow events (reduced flood damage)
- Provide water, forage, and shade for wildlife and livestock
- Act as migration corridors for wildlife and birds
- Create opportunities for recreation (fishing, camping, picnicking, hiking)
- Maintain in-stream flows and restore perennial flow
- Maintain aquatic habitat for healthy fish populations
- Raise and maintain the water table
- Increase habitat diversity for wildlife and plants
- Enhance aesthetics

Problems with riparian function generally occur in four ways:

- Alterations in streamside vegetation and soil conditions,
- Changes in channel morphology (water velocity, water table, width-to-depth ratio, substrate composition),
- Altered water temperatures, nutrient loads, sediment loads, bacterial counts, or
- Degradation and erosion of streambanks (Platts 1989; Johnson 1992).

Grazing effects on vegetation and streambank vegetation are important to riparian function (Elmore and Beschta 1987; Platts 1989; Johnson 1992). A range of livestock management strategies that are compatible with riparian restoration are available including timing, duration, and frequency of grazing use or livestock exclusion (Elmore and Kaufman 1994; Platts 1990; Kovalchik and Elmore 1991; and Johnson 1992). A number of successful approaches have relied on cooperation in applying grazing management with the grazing operator, sometimes on both public and private lands.

Riparian areas were greatly altered by early grazing practices prior to the Taylor Grazing Act of 1934 that established control over livestock grazing practices on the public domain (Leopold 1946). Riparian restoration is becoming more widespread and common in every region of the country (Natural Resources Law Center, 1996). The Government Accounting Office review of 22 stream restoration efforts in the West (1988) concluded that there were "no major technical impediments" to riparian restoration. In fact, stream classification systems and assessment tools are well developed (Kenna et al. 1999). Successful restoration efforts consider the complex relations of riparian function and the role of vegetation, which again suggests the importance of grazing management (Elmore and Beschta 1990; Elmore and Kaufman 1994).

Multiple factors, including livestock grazing, often affect riparian systems, indicating the need for careful analysis of contributing factors and management options (Elmore and Kaufman 1994; Adams and Fitch 1995; Hunter 1991; Reeves et al 1991; Robbins and Wolf 1994; Todd and Elmore 1997; Furniss et al 1991). But the primary focus is restoring streamside vegetation (Elmore and Beschta 1987). While livestock exclusion can be a solution (Elmore and Kaufman 1994), changes in livestock management can often also be effective without the expenditures for exclosure fences (Elmore and Beschta 1987; Kinch

1989). Strategies for riparian restoration involving timing, duration and frequency of grazing use have been addressed by Elmore and Kaufman (1994), Platts (1990) Kovalchik and Elmore (1991), and Johnson (1992). Some of the most prominent, large-scale riparian restoration successes, such as Bear Creek drainage and Trout Creek Mountains in Oregon, have relied on cooperation to create long-term, sustainable restoration and grazing management actions (Kenna et al. 1999).

The potential for long-term restoration results through a cooperative effort are probably best illustrated by the changes implemented on Bear Creek in Oregon, initiated under a 1973 watershed plan. Based primarily on changes in grazing management (timing and duration), the riparian plant community increased by 76%, eroding and damaged banks decreased by 90%, and 17% to 26% increases occurred in the grass-sedge-rush community between 1978 and 1994 (Rasmussen 1995; Chaney et al. 1990), at the same time available livestock forage increased. Bear Creek and other case studies suggest that reliance on reducing numbers of livestock, while it may produce changes in upland vegetation, may be less important to riparian improvement than other factors (Platts 1990; Kenna et al. 1999).

The response to restoration practices may vary according to riparian area characteristics or conditions. Clary et al. (1996) suggested that past grazing practices at their study site in eastern Oregon probably altered conditions, such that a wide range of grazing treatments (including no grazing) for a period of 7 years resulted in few differential responses by plants or animals. In some cases, recovery of native riparian vegetation may be very slow due to deterioration of stream condition (downcutting, widening), dominance of non-native annuals within the riparian area, or loss of native seed sources (Clary et al. 1996).

In 1993, the BLM adopted the Process for Assessing Proper Functioning Condition (PFC; BLM 1993) as its standard methodology for determining the condition on riparian resources on public lands. The BLM has aggressively undertaken the task of conducting PFC assessments on its lands, resulting in a decrease of sites classified as Unknown from 55% in 1993 to only 4% in 2001. As a result of its commitment to the standardized PFC assessment technique, the BLM has compiled several years of information on the status and trends of riparian conditions on lands under its management.

Riparian habitat on BLM lands in the lower 48 states includes 34,137 miles adjacent to flowing water (lotic systems) and 328,660 acres of riparian habitat associated with standing water (lentic systems). As of October 2001, the condition of approximately 96% of lotic riparian areas on BLM lands in the lower 48 States had been assessed using the Proper Functioning Condition (PFC) assessment technique (BLM 2002). Overall, 42% were classified as being in Proper Functioning Condition, 43% as Functioning-At-Risk (FAR), 11% as Non-Functional, and 4% as Unknown (see Figure 3.5.2.1; BLM 2002). Of the miles in the FAR category, 36% were in an upward trend, indicating that the condition is improving and no changes in management are immediately needed. In September 1990, the BLM published its Riparian-Wetland Initiative for the 1990s (BLM 1990). The Initiative set the goal of restoring or maintaining riparian-wetland areas so that 75% or more would be in PFC by 1997. The fact that only 42% of BLM's lotic riparian areas were classified as PFC in 2001 illustrates riparian systems have not responded as quickly as desired.

As of October 2001, the condition of approximately 67% of lentic riparian areas on BLM lands in the lower 48 States had been assessed using the PFC assessment technique (BLM 2002). Overall, 51% were found to be in PFC, 15% in FAR, 2% in Non-Functional, and 32% were Unknown (BLM 2002; see Figure 3.5.2.2).

Over the past 15–20 years, the BLM has focused a great deal of its restoration efforts on riparian areas. Riparian areas typically respond quickly to management changes, and in some instances recovery has been dramatic. Many of the restoration efforts have been in highly visible areas, providing opportunities to increase public exposure to, and understanding of,

riparian function. While the apparent trend based on the percentage in Properly Functioning Condition shows improvement from 36% to 42% in miles of stream, and from 41% to 51% in wetland acres, these percentages are affected by shifts of 16% and 12% percent out of the unknown classification, reflecting the BLM's effort to develop a more complete inventory of the condition of riparian resources (see Table 3.5.2.1 and Table 3.5.2.2). In future years, the aggregate condition trend for streams should be more readily apparent with the relatively low mileage (4%) in the unknown classification.

3.6 FIRE AND FUELS

Recurring fires are often an essential part of the natural environment—as natural as the rain, snow, or wind (Hardy et al. 2001). Evidence of past fires can be found in charcoal layers of lakes, in fire scars on trees, and adaptations of many plants. Many ecosystems in North America are fire dependant (Heiselman 1978).

Before European settlement, fire was the most common influence on the landscape in the Intermountain West (Gruell 1983), and in most of the Southwest (Wright 1990). In the drier parts of the West, the significance of the effects of fire on vegetation is difficult to separate from the effects of drought (Wright 1990). Woody species have become dominant in areas where frequent fires used to control them. A loss of species diversity and site degradation has occurred from human intervention in fire regimes. This has correlated into larger and more severe fires in the last few decades.

After Europeans settled the West, grazing and cultivation reduced fuels and organized fire suppression began. Thus the number and size of fires was drastically decreased (Gruell 1983; Swetnam 1990). Fire exclusion has had the greatest affect on ecotones, where naturally occurring fires previously removed woody species. Ferry and others (1995) concluded that altered fire regimes was the principal agent of change affecting the vegetative structure, composition, and biological diversity in five major plant communities totaling over 350 million acres in the United States. Leenhouts (1998) compared the estimated land area burned 200–400 years ago (preindustrial) to data in the contemporary contiguous United States. The result suggests that ten times more acreage burned annually in the preindustrial era than does in modern times.

For more than 50 years the fire policy of fire exclusion has had major effects on ecosystem health. The problems have been foreseen for some time. Sixty years ago Weaver (1943) reported that the "complete prevention of forest fires in the ponderosa pine region of California, Oregon, Washington, northern Idaho, and western Montana has certain undesirable ecological and silvicultural effects [and that]...conditions are already deplorable and are becoming increasingly serious over large areas." Also, Cooper (1961) stated, "...fire has played a major role in shaping the world's grassland and forests. Attempts to eliminate it have introduced problems fully as serious as those created by accidental conflagrations." Recently, concerns about the loss of biodiversity have surfaced as a result of the suppression of fire.

In 2000, the fire season was one of the worst on record and thus prompted then President Clinton to ask the Secretaries of Agriculture and Interior to prepare a report, known as the National Fire Plan, that recommended how best to respond to the year's severe wildfires, reduce the effects of those fires on rural communities, and ensure sufficient firefighting resources in the future. This report, prepared by the Department of the Interior and the Department of Agriculture in collaboration with the Association of State Foresters, has shaped the role of fire management for the past few years. In August of 2001, the Federal Land Management Agencies published the Ten-Year Comprehensive Strategy, thus setting the stage for fire management practices for the next 10 years. In this document, one of the five key goals is to restore fire-adapted ecosystems. Under this goal are the driving forces of

fire and fuels treatments that are to enhance ecological health.

In August of 2002, President Bush visited the Squires fire in Oregon and announced his Forest and Rangeland Health Initiative. This Initiative is meant to help the Federal Land Management agencies conduct fuels projects more efficiently.

Another major factor affecting ecosystem health and fire frequency is the spread of flammable exotic annual grasses such as cheatgrass and noxious weeds. Since the early 1900's, these annual grasses have spread across the West, occupying the open interspaces between the native grass, forb, shrub, and tree species. Once established, these highly flammable annual grasses provide a fuel source for uncharacteristically frequent fires. As fire frequency increases so do the annual grasses, which are more competitive for the limited moisture in the arid portions of the West than are the native grasses. With the increase in fire frequency and the increased competition from these flammable exotic grasses, more and more native rangeland converts to a more exotic dominated landscape. As this increases so does fire frequency which keeps these areas invaded by the exotic annual grasses locked into a frequent fire cycle that perpetuates the problem. Fire frequency changes from a more historic 25–75 year cycle to a 3–5 year cycle. Once converted to an exotic annual vegetation type, these landscapes require major rehabilitation efforts of spraying the exotic annuals and reseeding to desirable perennial plant species to convert them to a fire regime that more closely resembles what occurred historically.

3.6.1 Fire Regimes

There are many different fire regimes throughout the West. These range from frequent, low-intensity fires to long fire return intervals with stand replacement fires. Fire regimes are classified as understory, mixed, and stand replacement.

3.6.2 Understory Fire Regimes

Fires were frequent and of low intensity. Light surface fires burned at intervals averaging less than 10 years and as often as every 2 years (Weaver 1951; Dieterich 1980). All material was consumed on the forest floor during a fire. Trees were not usually killed and the damage was highly variable (Paysen et al. 2000).

Over the past 100 years, the structural and compositional changes in ponderosa pine have been repeatedly documented (Cooper 1960; Biswell et al. 1973; Brown and Davis 1973). What was once an open, parklike ecosystem maintained by frequent, low-intensity fires is now a crowded, stagnated forest. In addition to stand changes, general fire absence has led to uncharacteristically large accumulations of surface and ground fuels (Kallender 1969).

Pre-1900 and early 1900s photos document that ponderosa pine stands were much more open. Explorers, soldiers, and scientists described a forest quite different from that seen today. The open presettlement stands, characterized by well-spaced older trees and sparse pockets of younger trees, had vigorous and abundant herbaceous vegetation (Cooper 1960; Biswell et al. 1973; Brown and Davis 1973). Frequent, naturally occurring fires maintained this situation. Large woody fuels in the form of branches or tree boles, which fall infrequently, rarely accumulated over a large area. When they were present, subsequent fires generally consumed them, reducing grass competition and creating mineral soil seedbeds, which favored ponderosa pine seedling establishment (Cooper 1960).

In the early 1900s, forest practices and reduced incidence of fire led indirectly to stagnation of naturally regenerated stands and unprecedented fuel accumulation (Biswell et al. 1973). Stand stagnation occurs on tens of thousands of acres throughout the southwest

(Cooper 1960; Schubert 1974) and still exists where mechanical treatments or fire have not taken place.

A combination of heavy forest floor fuels and dense sapling thickets acting as ladder fuels, coupled with drought conditions, frequent lightning, and human-caused ignitions, has resulted in a drastic increase in high-severity wildfires in recent years.

3.6.3 Mixed Fire Regimes

The pinon-juniper woodlands cover about 47 million acres in the western United States (Evans 1988). Pinon-juniper woodlands in the United States are commonly divided into the Southwestern and the Great Basin woodland ecosystems on the basis of species composition (Paysen et al. 2000). True pinon is common in the Southwest and is usually associated with one or several species of junipers, including one-seed, Utah, alligator, and Rocky Mountain junipers. Singleleaf pinon is identified with the Great Basin and is generally associated with Utah juniper. Other species of pinon occur in southern California, Arizona, south of the Mogollon Rim, along the United States-Mexico border, and in Texas (Bailey and Hawksworth 1988). Long-term fire frequencies for pinon-juniper woodlands have not been clearly defined and are the topic of continuing study and discussion. However, there is an agreement that fire was the most important natural disturbance before the introduction of livestock, particularly the large herds of the nineteenth century (Gottfried et al. 1995). It is suspected that before the introduction of livestock use, large areas of savanna and woodland periodically burned. These fires could have occurring during dry years that followed wet years when substantial herbaceous growth developed (Rogers and Vint 1987; Swetnam and Baisan 1996).

In the Intermountain West, presettlement mean fire intervals of less than 15 years were documented in the sagebrush steppe where western juniper now dominates (Miller and Rose 1999). In three sample areas in New Mexico, pinon trees have mean fire return intervals of 28 years with a range of 10-49 (Wilkins 1997). In areas of low productivity, fire return intervals could be greater than 100 years, and occurred more frequently in extreme conditions. However, where grass cover was more continuous, fire return intervals were more frequent (10 years; Paysen et al. 2000). In the Great Basin, fire susceptibility depends on the stage of stand development (Meeuwig et al. 1990). In young stands, ground cover may be sufficient to carry a fire, but in older stands ground cover is sparser and may not be sufficient to carry a fire.

In western oak forest, the fire regimes have been historically classified as frequent low intensity; however, in more recent times these have become more intense with longer return intervals.

3.6.4 Stand Replacement Fire Regimes

Vegetation types with this fire regime are varied. Broadly speaking, they include grassland and shrubland vegetation types. Shrublands consist of desert shrublands and the chaparral mountain shrub type.

Fire frequencies cannot be measured precisely, but most likely occurred every 4 to 20 years (Gruell 1985a). Lightning was probably more important in valleys surrounded by forests than in the grasslands (Gruell 1985b). Fires would burn over large areas in the grasslands, with only natural barriers or weather changes to stop them. These fires would sometimes cover hundreds of square miles (Paysen et al. 2000).

In Wyoming, big sage fire intervals ranged from 10 to 70 years (Young and Evans 1981; Vincent 1992). In arid land, fire history reports fire intervals between 5 and 100 years (Wright 1986). Griffiths (1910) and Leopold (1924) reported that before 1880, desert grasslands produced more grass and fire recurred at approximately 10-year intervals.

In chaparral, fire intervals for large fires (more than 5,000 acres) typically ranged from 20 to 40 years (Wright and Bailey 1982).

3.7 SOILS

3.7.1 Upland Soils

Soils in the analysis area are highly diverse, reflecting the enormous range in environmental conditions found on public lands in the West. Soil development and formation are controlled by five, soil-forming factors:

1. climate, especially temperature and precipitation;
2. living organisms, such as native vegetation, microorganisms, and animals;
3. parent material properties, such as chemical and mineralogical composition, grain size, and resistance to weathering;
4. topographic variables such as slope steepness and shape, aspect, position on the landscape, and drainage pattern; and
5. the relative time soils are subject to the soil forming processes (Jenny 1961).

These soil-forming factors have combined in the development of seven major soil orders common on public lands in the West. The soils represented by these soil orders have unique properties that greatly influence the productivity, ability to respond to management, and susceptibility to degradation of the public lands of the West (Figure 3.7.1.1).

Alfisols are moderately leached forest soils that occur in cool, moist regions. They are moderately well developed soils that contain an appreciable clay accumulation in their subsoil. Alfisols are common in the coniferous and deciduous forests and mountain shrub communities at higher elevations, and areas influenced by moist maritime weather patterns in the West. These soils are relatively productive and respond favorably to improved land management practices.

Andisols are soils that formed in volcanic ash or other volcanic ejecta. The poorly crystalline volcanic glass composition give them unique chemical and physical properties, including high water-holding capacity and the ability to make large quantities of phosphorus unavailable to plants. These soils are mainly concentrated in forested mountains of the Marine and Temperate Steppe Divisions. They are highly productive and respond favorably to improved land management practices.

Aridisols are soils that developed in very dry conditions. They are light colored; low in organic matter; and may contain accumulations of calcium carbonate, soluble salts, sodium, or gypsum. Aridisols are extensively found in the Temperate Desert and Tropical-Subtropical Desert Divisions and drier regions of the Temperate Steppe and Tropical-Subtropical Steppe Divisions. They support millions of acres of rangeland vegetation communities such as desert shrub, sagebrush, and pinyon-juniper. Their dry moisture status much of the year and low organic matter content reduce their productivity. This results in a slower or decreased ability to respond favorably to improved land management practices. The typically harsh

environmental conditions can also make them more susceptible to degradation from poor land management practices.

Entisols are soils with weakly developed profiles and are considered young in terms of soil forming processes. They often occur in recently deposited material or on steep, highly erosive topographic positions. Entisols are very extensive on public lands in the West and are most common in the Temperate Desert and Tropical-Subtropical Desert Divisions arid and semiarid environments supporting desert shrub and sagebrush communities. These soils may respond more slowly to improved land management practices and are often susceptible to degradation from poor land management practices.

Inceptisols have more well-developed profiles than Entisols but are still considered young soils with weakly developed profiles. They are widely distributed and occur under a wide range of ecological settings, including steep slopes, young geomorphic surfaces, and resistant parent materials. Inceptisols are common in the coniferous and deciduous forests of mountainous portions of the Marine and Temperate Steppe Divisions, are fairly productive when provided adequate moisture, and respond well to improved land management practices.

Mollisols are characterized by a thick, dark surface horizon with high organic matter content. These fertile soils are extensive in the grasslands of the Temperate Steppe, Mediterranean, Temperate Desert and Tropical-Subtropical Steppe Divisions. Mollisols support the plains grassland, chaparral-mountain shrub, mountain and plateau grasslands, higher precipitation sagebrush steppe, and coniferous-deciduous forest community types with an appreciable grass understory. These soils are highly productive and respond well to improved land management practices.

Vertisols are soils very high in clay content that have extreme shrink-swell properties. These soils are found on minor acreage in the Mediterranean, Tropical-Subtropical Steppe, and Temperate Steppe Divisions. Vertisols support a variety of grassland and shrubland vegetation communities. These soils present considerable engineering problems, including fence building. Depending upon available rainfall, Vertisols can be productive and respond well to improved land management practices.

The long-term productivity and health of the soil depends on maintaining the soil's physical, chemical, and biological properties in a favorable condition. Water and wind erosion are influenced by climate, topography, soil properties and condition, watershed cover, and land use. Cover is especially important in protecting the soil from the erosive forces of water and wind. Live plant cover and litter intercept precipitation, reducing raindrop impact and overland flow, and allowing more infiltration and less runoff and erosion. Cover and soil surface roughness also reduce wind speed, thus minimizing wind erosion.

Upland rangeland water erosion processes include sheet-rill erosion, gully erosion, and landslides. Sheet-rill erosion is less noticeable but is very widespread and can slowly reduce the productivity of rangeland soils. Gully erosion is more noticeable and can alter the hydrology of the landscape. Uplands on many rangeland landscapes have an extensive gully network, replacing former grass-covered swales. This has altered water flow patterns, resulting in increases in size and frequency of runoff, and sediment yield to streams. Landslides mainly occur on very steep slopes with enough precipitation to saturate the soil to a restrictive layer and are not prevalent on the majority of rangelands.

Soil compaction can result from persistent trampling or vehicle traffic during periods when the soil is moist and least able to resist structural degradation. Soil compaction can reduce water infiltration, water movement through the soil profile, water availability to plants, and soil aeration, and it can increase runoff.

Soil organisms have a profound effect on the maintenance of soil productivity and

health. Biological soil crusts play a critical role in carbon and nitrogen fixation, soil surface stability, and reduction of annual grass invasion in many rangeland ecosystems. They can also influence infiltration, runoff, and soil moisture retention depending on crust structural characteristics, soil surface texture, and other factors. Many rangeland shrubs and bunchgrasses depend on mycorrhizal fungi to help them obtain water and nutrients. Soil bacteria are important in nitrogen fixation and formation of stable soil aggregates on rangelands. Bacteria are capable of filtering and degrading a large variety of human-made pollutants in the soil and groundwater so that they are no longer toxic. Soil arthropods and other soil animals create large soil pores essential for infiltration and soil water movement. They also help mix soil layers and incorporate soil organic matter into the soil. These and other soil organisms help maintain the soil food web that is essential for cycling of nutrients and other vital functions on rangelands. As much as 90% of rangeland productivity occurs in the soil (Coupland and Van Dyne 1979). Soil organisms depend on soil organic matter to survive. Any activities that permanently reduce soil organic matter content will have a profound effect on rangeland health and long-term productivity.

3.7.2 Riparian Soils

Riparian soils are formed by sediment eroded from adjacent uplands and deposited in the valley bottoms, stream sediment deposition during overbank flooding, lateral deposition of sediment from stream meander migration, and sediment deposition on lake bottoms and shores. The pedogenic properties of riparian soils dominantly result from repeated periods of saturation, flooding, or ponding. Saturation combined with anaerobic (without oxygen), microbial activity often causes a depletion of oxygen in the soil. This process can result in the accumulation of organic matter and the reduction, translocation, or accumulation of iron, manganese, sulfur, or other reducible elements (USDA, Natural Resources Conservation Service 1998). These processes create complex patterns of soil characteristics, such as texture, age, and degree of formation, over relatively small areas in riparian systems.

Riparian soils are vitally important for capturing, storing, and releasing water in riparian areas, supporting productive vegetation communities, groundwater recharge, perching groundwater, streambank formation, storing nutrients, filtering pollutants, streambank erosion protection, and determination of sediment characteristics. Disturbances that result in reduction of plant cover or deep rooting characteristics, streambank sloughing, accelerated erosion, compaction, loss of the capability to perch water, or other soil characteristics can degrade the functional integrity of a riparian area.

3.8 WATER RESOURCES

3.8.1 Riparian Hydrology

The interaction between flowing water, the stream channel, hydrologic processes, riparian vegetation, and aquatic life is complex and interdependent. Vegetation overhanging streambanks helps regulate water temperature, indirectly maintaining dissolved oxygen levels needed for aquatic life. Stream bank and floodplain vegetation slow runoff, stabilize stream banks, trap sediment, filter pollutants and allow groundwater to recharge. The alluvial floodplain stores winter runoff as groundwater, then releases the water into the stream during dry season, thereby extending perennial flow even during extended droughts.

Alluvial stream channel structure and stability are influenced by the adjacent riparian

vegetation and soil characteristics. Channels respond to the energy of flowing water by adjusting channel features, including width and depth, streambed slope, and the roughness of the channel bed and banks. (Features such as vegetation, bed materials, and gravel bars cause Roughness.) Soil characteristics such as texture or rock fragment content influence erodability of streambanks and channel migration. Streams functioning in a state of dynamic equilibrium, in which there is a balance between erosion and deposition, experience no net loss or gain in sediment load. As flow and sediment supply vary, channel features adjust in an attempt to achieve a new balance. Stream channel adjustments are related to the dissipation or conservation of energy, and to the distribution of energy expenditure (Leopold 1994). Stream channels and riparian areas are resilient and naturally dynamic landforms, constantly adjusting to natural disturbances resulting from floods or changes to landscapes upstream such as fire.

Stream channels and riparian communities may be degraded as a result of local or off-site disturbance. Sensitive hydrologic interrelations exist between the condition of uplands and their associated riparian communities. Uplands in nonfunctioning condition often experience accelerated surface runoff, higher sediment yields, and increased erosion within the channel systems (DeBano and Schmidt 1989). Changes in the vegetative cover of floodplains and streambanks influence the function and stability of the riparian community.

Stream-riparian systems that experience increases in runoff and sediment from upland sources or increased susceptibility to erosion from direct disturbance often cannot adjust their channel features to achieve equilibrium. If sediment increases beyond the stream's ability to carry it, channels tend to aggrade and form multiple, interwoven braided channels. In another type of stream system, where channel erodability or streamflow is increased, with relatively low sediment production, channels may erode. Streams with coarse-textured substrates and fine-textured banks tend to laterally erode, becoming shallower and wider, often creating braided conditions. Stream channels with fine-textured substrates, common at lower elevations, usually erode vertically, forming gullies.

When disturbance factors are managed, most stream-riparian systems begin a relatively rapid recovery. Incised or laterally widened streams, however, with low sediment yields, with or without fluctuating flow patterns, recover slowly.

3.8.2 Water Quality

The primary water quality issues related to livestock grazing on Federal lands have been associated with nonpoint-sources of sediment, fecal coliform bacteria (used as an indicator for other fecal-borne pathogens), nutrients, and salinity. The leading causes of nonpoint-source water quality impairment are siltation (sediment), nutrients, bacteria, metals (primarily mercury), and oxygen-depleting substances.

The Water Quality Act of 1987 (P.L. 100-4) sets forth agency responsibility for nonpoint-source water quality management on public lands (Section 313).

It is recognized that Best Management Practices (BMPs) are the primary mechanism for enabling the achievement of water quality standards. The BLM strategy by which nonpoint source controls, including BMPs, are selected to achieve water quality standards includes the following iterative process: (1) design of BMPs based on site-specific conditions; technical, economic, and institutional feasibility; and the water quality standards of those waters potentially effected; (2) monitoring to ensure that practices are correctly designed and applied; (3) monitoring to determine a) the effectiveness of practices in meeting water quality standards, and b) the appropriateness of water quality criteria in reasonably assuring protection of beneficial uses; and (4) the adjustment of BMPs when it is found that water

quality standards are not being protected to a desired level, or the possible adjustments of water quality standards on the basis of considerations in 40 CFR 131.

In Water Quality Act Section 305(b) reports to the Environmental Protection Agency (EPA) in 2000, the 11 western States that contain lands managed by the BLM reported that, statewide, aquatic life on 63% of their stream miles assessed were supported or threatened. Thus, 36% of the stream miles assessed were partly or not supporting aquatic life. Nonpoint-sources of pollution from urban and agricultural lands are reported as the leading source of water quality impairment.

The BLM participates in a Federal program directed by the Colorado River Salinity Control Act (PL 98-569) to reduce salt loading in the Colorado River. Salt concentrations on Federal lands are highest in marine shale geologic settings, where annual precipitation averages less than 12 inches.

It has been estimated that Federal land contributes 8% of the total salt load of the Upper Colorado River Basin from nonpoint-sources (BLM 1980). Salinity from nonpoint-sources increases with sediment yield. Vegetation cover is the most important management variable influencing runoff and sediment yields (BLM 1987). Salinity and vegetation management are a consideration in all projects initiated in the Colorado River Basin.

3.9 AIR QUALITY

The Clean Air Act of 1990 (P.L. 101-549) required the EPA to develop standards for the maximum concentration of certain pollutants that should appear in healthy ambient air. These standards are called National Ambient Air Quality Standards (NAAQS). The EPA reevaluates the NAAQS periodically to ensure the limits accurately reflect the most up-to-date health data for air pollution.

Regions are required to monitor ambient area for compliance with NAAQS standards. If a region exceeds a standard for a pollutant, the EPA can designate the area as a nonattainment area. Nonattainment areas then must submit plans to EPA called State Implementation Plans (SIPs) that show the limits and regulations the region will impose, as well as modeling data to show EPA the SIP will bring the area into compliance with the NAAQS standard.

Attainment regions are regulated by Prevention of Significant Deterioration (PSD) requirements. To ensure that the levels of pollutants in clean air areas do not rise unnecessarily, the Clean Air Act separates areas into PSD Classes I, II, and III designations, depending on the need for significant protection.

PSD Class I areas, predominantly National Parks and certain wilderness areas, have the greatest limitations. Virtually any degradation would be significant. Areas where moderate, controlled growth can occur are designated PSD Class II. PSD Class III areas allow the greatest degree of effects. All BLM-administered lands are classified as PSD Class II.

The air quality above most western Federal lands cannot be easily described, since monitoring data have not been gathered for most pollutants outside urban areas. In less-developed portions of the West, ambient pollutant levels are expected to be near or below the measurable limits. Air quality on public lands is directly affected by the protection of soil by vegetation. Where soil is exposed, there is a possibility for air quality problems as a result of dust caused by wind over exposed soil. Vegetative cover of soil is affected by many factors including, drought, fire, grazing by livestock and wildlife, disease, and insects.

3.10 WILDLIFE

3.10.1 Terrestrial

The Bureau of Land Management administers more than 262,000,000 acres of terrestrial wildlife habitat on the public lands in the western States. These public lands sustain a nationally significant, rich heritage of diverse fish and wildlife by providing seasonal or permanent habitat for more than 3,000 species of mammals, birds, reptiles, amphibians, and fish that are significant for their aesthetic, recreational, and scientific values.

Increasing human populations in the West place ever-increasing consumptive and nonconsumptive demands on the wildlife and habitat. The settlement of the West has had a widespread and significant influence on wildlife habitats and species on the public and private lands. Urbanization, agriculture, roads, livestock grazing, and noxious weeds have been major factors affecting habitat for wildlife species. Grazing, when improperly managed, (such as during the uncontrolled grazing in the late 1800s through the mid-1930s), has had negative effects on the arid rangelands of the West and has reduced the quality of wildlife habitats.

Temperate Desert

The Temperate Desert generally occurs within the Columbia Plateau/Great Basin. This large, complex region is relatively arid due to its position in the rain shadow of the adjacent western mountain ranges (Cascade and Sierra Nevada Mountains). The vegetation complexes are dominated by sagebrush, pinyon-juniper woodlands, mountain shrub, ponderosa pine, lodgepole pine-subalpine fir forests, grasslands, and some very significant wetlands. Mammals typical of this region include pygmy rabbit (*Brachylagus idahoensis*), mule deer (*Odocoileus hemionus*), Rocky Mountain elk (*Cervus canadensis*), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), mountain lion (*Felis concolor*), bobcat (*Lynx rufus*), coyote (*Canis latrans*), kit fox (*Vulpes velox*), and numerous species of squirrels and voles. Reptiles and amphibians typical of the region include sagebrush lizard (*Sceloporus graciosus*) and western rattlesnake (*Crotalus viridis*).

Temperate Steppe

The temperate steppe, generally occurring within the Colorado Plateau/Wyoming Basin, is a complex of mountain ranges dominated by a variety of coniferous forest types, interspersed with aspen communities, pinyon-juniper woodlands, and separated by the tablelands of the Colorado Plateau. The Colorado Plateau/Wyoming Basin is also occupied by mule deer, Rocky Mountain elk, and pronghorn.

Tropical-Subtropical Steppe

The Tropical-Subtropical Steppe in the rainshadow of the Rocky Mountains is characterized by shortgrass prairie with its greatly reduced vegetation stature and diversity, and the significant playa lakes shorebird and waterfowl wintering areas. Precipitation increases from west to east and temperature increases from north to south. These climatic gradients have created the lush tallgrass prairie east of the 100th Meridian, midgrass prairie in the northwestern plains, and shortgrass prairie in the west-central plains (Bailey 1978). Improper livestock grazing, through consumption of fire fuels, has encouraged woody plant invasions by reducing the natural frequency and intensity of wildfires (Bock et al. 1993). Historically, American bison (*Bos bison*) played a significant role in the ecosystem that favored shortgrass-preferring species such as mountain plover (*Charadrius montanus*) and burrowing owl (*Athene cunicularia*). The shortgrass prairie was also home to the wolf (*Canis lupus*), as well as elk.

Tropical-Subtropical Deserts (Mojave, Sonoran, and Chihuahuan)

The Tropical-Subtropical Deserts include the Mojave, Sonoran, and Chihuahuan deserts that

are composed of arid scrublands and grasslands at the lower elevations, and oak–juniper woodlands and coniferous forests in the higher elevations. While grazing by native ungulates tended to be widely scattered and of low intensity, historical improper livestock grazing was heavier and degraded many grasslands into permanent desert scrub (Schlesinger et al. 1990). Historically, pronghorn occurred in all of the major valleys; wild turkey (*Meleagris gallopavo*) and grizzly bears (*Ursus arctos*) occurred in all major riparian areas; and wild turkey and black bear (*Ursus americanus*) in all mountain ranges. Reptiles include the desert tortoise (*Gopherus agassizii*).

3.10.2 Migratory Birds

Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds) recognized that migratory birds are of great ecological and economic value to the United States and many other countries. Migratory birds bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals—Mexico 1936, the Convention for the Protection of Birds and Their Environment—Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment—Union of Soviet Socialist Republics 1978. These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats. Through the Migratory Bird Treaty Act, the United States has implemented these migratory bird conventions with respect to the United States.

Birds are particularly affected by changes in their physical environment (i.e., nesting and foraging habitat; Cody 1985). When improper livestock grazing results in physical changes in the environment, such as conversion of grassland habitats to shrublands, native avian populations may be adversely affected. Table 3.10.2.1 is a list the U.S. Fish and Wildlife Service (FWS) Western Regions (FWS Regions 1, 2, and 6) Birds of Conservation Concern 2002 (BCC 2002). The BCC 2002 is a result of the 1988 amendment to the Fish and Wildlife Conservation Act mandate to "identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973." The BCC 2002 is primarily derived from assessment scores from three major bird conservation plans: Partners in Flight, the United States Shorebird Conservation Plan, and the North American Waterbird Conservation Plan.

Temperate Steppe and Temperate Desert

Birds typical of this region include greater sage-grouse (*Centrocercus urophasianus*), Gunnison sage-grouse (*Centrocercus minimus*), sage thrasher (*Oreoscoptes montanus*), sage sparrow (*Amphispiza belli*), loggerhead shrike, Brewer's sparrow (*Spizella breweri*) in the terrestrial environment and American white pelican (*Pelecanus erythrorhynchos*), cinnamon teal (*Anas cyanoptera*), gray vireo (*Vireo vicinior*), northern pintail (*Anas acuta*), tundra swan (*Cygnus columbianus*), American avocet (*Recurvirostra americana*), black-necked stilt (*Himantopus mexicanus*), willet (*Catoptrophorus semipalmatus*), Wilson's phalarope, eared grebe (*Podiceps nigricollis*), mountain plover, snowy plover (*Charadrius alexandrinus*), white-faced ibis (*Plegadis chihi*), and California gull (*Larus californicus*) in the wetlands.

The response to grazing is dependent on the avian species. Among the species that respond positively to grazing are the golden eagle (*Aquila chrysaetos*), brown-headed cowbird (*Molothrus ater*), and sage sparrow. Species such as the northern harrier (*Circus cyaneus*), swainson hawk (*Buteo swainsoni*), savannah sparrow (*Passerculus sandwichensis*),

grasshopper sparrow (*Ammodramus savannarum*), white crowned sparrow (*Zonotrichia leucophrys*), Brewer's sparrow, vesper sparrow (*Pooecetes gramineus*), ferruginous hawk (*Buteo regalis*), burrowing owl, short-eared owl (*Asio flammeus*), western (*Sturnella neglecta*) and eastern (*S. magna*) meadowlarks respond adversely to improper grazing (Bock et al. 1993).

Tropical-Subtropical Steppe

Birds typical of this region include mountain plover, McCown's longspur (*Calcarius mccownii*), long-billed curlew, ferruginous hawk, burrowing owl, and lesser prairie-chicken (*Tympanuchus pallidicinctus*). Playa lakes in this region are significant for a myriad of wintering ducks, sandhill cranes, and shorebirds, as well as breeding habitat for snowy plover (*Charadrius alexandrinus*).

Livestock grazing has resulted in varied responses by neotropical migratory birds who breed and winter in the Tropical-Subtropical Steppe region. Species such as killdeer (*Charadrius vociferans*), mountain plover, burrowing owl, common nighthawk (*Chordeiles minor*), horned lark (*Eremophila alpestris*), northern mockingbird (*Mimus polyglottos*), lark sparrow (*Chondestes grammacus*), black-throated sparrow (*Amphispizabilineata*), and McCown's longspur may often respond positively. Among the species that usually respond adversely to improper grazing are northern harrier, short-eared owl, Botteri's sparrow (*Aimophila botterri*), Cassin's sparrow (*Aimophila cassinii*), savannah sparrow, Baird's sparrow (*Ammodramus bairdii*), Henslow's sparrow (*Ammodramus henslowii*). Species such as the sandpiper (*Bartramia longicauda*), Sprague's pipit (*Anthus spragueii*) dickcissel (*Spiza americana*), lark bunting (*Calamospiza malanocorys*), grasshopper sparrow, chestnut collard longspur (*Calcarius ornatus*), bobolink (*Dolichonix oryzivorus*), red-winged blackbird (*Agelaius phoeniceus*), and eastern and western meadowlarks respond negatively to heavy grazing (Bock et al. 1993).

Tropical-Subtropical Deserts (Mojave, Sonoran, and Chihuahuan)

Birds typical of this region include Gambel's quail (*Callipepla gambelii*), scaled quail (*Callipepla squamata*), Montezuma quail (*Cyrtonyx montezumae*), Swainson's and ferruginous hawks, lesser nighthawk (*Chordeiles acutipennis*), Chihuahuan raven (*Corvus cryptoleucus*), verdin (*Auriparus flaviceps*), cactus wren (*Campylorhynchus brunneicapillus*), pyrrhuloxia (*Cardinalis sinuatus*), and crissal (*Toxostoma crissale*), Le Conte's (*Toxostoma lecontei*), and curve-billed (*Toxostoma curvirostre*) thrashers.

Riparian-Wetlands Birds

Riparian-wetland areas, with a broad mixture of grass, forb, and sedge species, support the most diverse native plant and animal populations of any region. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) recognize the importance of these areas and direct the BLM to avoid, to the extent possible, both short- and long-term adverse effects associated with the destruction or modification of wetlands and riparian areas.

While riparian-wetland ecosystems have always been a relatively minor component of the landscape in the West, Chaney et al. (1990) reported that riparian habitats are also the most modified land type in the West. Agricultural and urban development have been responsible the decline of more than 80% of the riparian-wetland ecosystems in the West. Improper livestock grazing, and the fragmentation frequently associated with it, is of great concern to the conservation of riparian-wetlands due to their vulnerability to disturbance and high wildlife value (Thomas et al. 1979; Knopf et al. 1988). In the San Pedro National Conservation Area, Arizona, when livestock were excluded from a study area, changes in avian populations were demonstrated: 42 species increased, 26 significantly; and 19 species decreased, 8 significantly (Table 3.10.2.2).

Conservation of neotropical migratory birds in the West depends very much on the protection and eventual restoration of riparian ecosystems. Southwestern riparian habitats host the highest breeding densities in all of North America (Carothers and Johnson 1975; Ohmart and Anderson 1982; Rice et al. 1983). In Idaho, 60% of all breeding neotropical migratory birds are found in riparian habitats (Saab and Groves 1992). In Colorado, 82% of all nesting species use riparian areas (Knopf 1985).

As in the Tropical-Subtropical Steppe region, avian species utilizing riparian-wetland regions vary in their response to livestock grazing. Species such as killdeer, Lewis' woodpecker (*Melanerpes lewis*), house wren (*Troglodytes aedon*), mountain bluebird (*Sialiacurrucoides*), American robin (*Turdus migratorius*), Brewer's blackbird (*Euphagus cyanocephalus*), pine siskin (*Carduelis pinus*), and brown-headed cowbird usually responded positively to grazing while species such as the Calliope hummingbird (*Stellula calliope*), willow flycatcher (*Empidonax traillii*), cedar waxwing (*Bombycilla cedrorum*), yellow-rumped warbler (*Dendroica coronata*), MacGillivray's warbler (*Oporornis tolmiei*), savannah sparrow, chipping sparrow (*Spizella passerine*), Lincoln's sparrow (*Melospiza lincolni*), Wilson's warbler (*Wilsonia pusilla*), Bullock's oriole (*Icterus bullockii*), and Cassin's sparrow responded adversely to grazing (Bock et al. 1993).

3.10.3 Riparian, Wetland, and Aquatic Communities

Riparian ecosystems are extremely productive and offer a unique combination of habitat niches critical to fish and wildlife. Riparian communities provide abundant food, cover, nesting sites, and water and are used extensively by wildlife at all stages of their life history. Riparian ecosystems are important for a wide range of physical and biological features, including:

- Dense vegetation cover for shelter, shade, nesting, and resting
- Presence of surface water and abundant soil moisture
- Diverse vegetation structure provides a range of habitat types
- Linear nature provides protected pathways for wildlife migration

Because of their importance to a wide range of both terrestrial and aquatic species, riparian ecosystems serve as repositories for biodiversity throughout the West. In the arid West, riparian habitats comprise less than 1% of the total acreage of public lands, but are utilized by approximately 72%, 77%, 80%, and 90% of all reptiles, amphibians, mammals, and bird species, respectively. Approximately 30% of the bird species in the region use wetlands and other aquatic areas exclusively. Riparian areas attract a disproportionate number of migrating birds and provide primary habitat for waterfowl and shorebirds (BLM 1994).

Riparian areas are critical to a wide variety of species, including many special status species. For example, wet meadow areas and riparian zones serve as critical feeding and watering sources for sage grouse (Hockett 2002). Larger vertebrate species depend on riparian areas. Mule deer and elk use riparian areas for food and cover and for travel and migration corridors (Thomas et al. 1979). Pronghorn use riparian areas extensively in summer (Cooperrider et al. 1986). Invertebrate species such as the springsnails, species that occur primarily as relict populations of formerly widespread species, also rely on riparian ecosystems (BLM 2001).

3.10.3.1 Cold Water Fisheries

Fish populations are directly affected by changes in riparian habitat. Numerous studies

document reduced trout populations as a result of habitat loss and degradation caused by improper livestock grazing (Platts 1991; Behnke 1992). The native cutthroat trout population in Huff Creek, Wyoming, increased from 36 fish per mile to 444 fish per mile in response to livestock exclusion followed by improved livestock management (Chaney et al. 1990). Measurements showed that Huff Creek's channel narrowed by about one-third and doubled in depth, and water temperatures declined in response to changes in livestock management (Chaney et al. 1990). Studies have shown that improper livestock grazing that causes changes in riparian and aquatic habitat, such as increased sediment loads and higher summer water temperatures resulting from riparian degradation, may give exotic, introduced trout species a competitive advantage over native trout (Griffith 1988; Stefferud 1988).

Excessive improper streamside grazing may remove vegetation, leading to higher water temperatures due to loss of shade, and higher levels of sediment in the stream as a result of increased soil erosion. Increased sediment can smother fish eggs in spawning areas, decreasing the abundance of young fish. Further, improper livestock grazing can remove vegetative cover and compact soils, slowing the rate of water percolation and infiltration and resulting in unnaturally high and frequent run-off. The increased erosion and subsequent frequent flooding can, in turn, alter cold-water fish habitat by filling pools and substrate with silt, uprooting riparian vegetation, widening stream channels, and lowering water tables (Bock et al. 1992). There is a clear and documented connection between the health of upland vegetation and the health of riparian communities and aquatic habitat. Chaney et al. (1993) noted that accelerated runoff from uplands triggers downcutting of soft substrate streams. The downcutting lowers both the streambed and water table, desiccates the riparian area, destabilizes streambanks, increases erosion, and further accelerates runoff.

Figure 3.10.3.1.1 shows the sequential degrading of a stream channel and its associated riparian community (BLM 1993). A healthy riparian community protects streambanks from erosion and maintains a high water table and productive habitat for fish and aquatic invertebrates (State A in Figure 3.10.3.1.1). As the stream channel erodes, the wet meadow areas become disconnected from the water table and dry out (State B in Figure 3.10.3.1.1). Sagebrush and rabbitbrush encroach on the site, resulting in a reduction in the amount and quality of forage. In the absence of protective riparian vegetation, the stream channel is likely to become incised and form a new base level (State C in Figure 3.10.3.1.1). Once the channel becomes incised, it is classified as nonfunctional. Over time, the incised channel widens and a new floodplain begins to develop at the new base level (State D in Figure 3.10.3.1.1). Figure 3.10.3.1.2 shows the stages in the recovery of a stream-associated riparian area.

3.11 SPECIAL STATUS SPECIES

Even though it is preferable to manage native plant and animal communities or ecosystems, the ESA necessitates that threatened and endangered species be managed by the BLM, species by species. Species that are considered special status species include species that are officially listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as threatened or endangered; are proposed for listing or are candidates for listing as threatened or endangered under the provisions of the Endangered Species Act (ESA); listed by a State in a category such as threatened or endangered, implying potential endangerment or extinction; and those designated by each BLM State Director as BLM- sensitive. Appendix B provides the most up-to-date list of BLM special status species in each western state. The species included in Appendix B may change at any time according to changes in the listings by the FWS; more current data from recent investigations; and further verification of a species presence on public land.

The BLM Special Status Species Management Policy (Manual 6840) provides policy and guidance,

consistent with appropriate laws, for special status species conservation with two primary policies: conserving listed species and the ecosystems on which they depend and ensuring that actions authorized or approved by the BLM do not contribute to the need to list further special status species as threatened or endangered. To this end, the 6840 manual provides that it is policy of the BLM to conserve federally listed species and designated critical habitat using existing authorities. It is also the policy of the BLM that candidate species be managed so that no action authorized or funded by the BLM contributes to the need to list the species.

The effects of livestock grazing on native plant and animal communities depend on the affected plant or animal, grazing intensity, season of use, and long-term weather patterns (Milchunas et al. 1988). The effect bison had on shortgrass prairie does not represent cattle grazing well, as bison migrated great distances and would graze an area only once or twice each year for relatively short periods. Livestock, on the other hand, if left unmanaged, tend to graze an area continuously for longer periods during the growing season.

Grazing has the potential to directly and indirectly affect special status species. Direct grazing effects include livestock consumption of palatable special status plants and direct trampling of special status species. Actions associated with livestock management may also result in harm to special status species through water development. In addition, livestock grazing may cause indirect negative effects on special status species. Indirect grazing effects may result from removing palatable forage and affecting nesting areas and cover for species such as desert tortoise and sage-grouse.

Animals

BLM management of the public lands is becoming increasingly complex because of the listing of additional species as threatened or endangered under the ESA in the West. With the last decade's dramatic increase (more than 200%) in ESA-listed species on BLM lands, the BLM is now responsible for managing more than 300 federally proposed or listed species and large tracts of other species' habitat, such as greater than 50% of the sage-grouses' remaining habitat. Once listing occurs, land management processes become more cumbersome and land uses become more restricted and the resulting restrictions affect the land manager, permittees or lessees, and other public land users. Appropriate and timely conservation measures for candidate species and other species of concern are critical for preventing decline of at-risk populations to the level where listing is necessary. Of special concern is the ability to make timely and effective grazing decisions with respect to Gunnison and greater sage-grouse, pygmy rabbits, mountain plover, and mountain quail. These species may be affected by improper grazing practices across their range and are all being considered for listing in the future. The BLM is presently in the draft stage of developing a "Sage Grouse Habitat Conservation Strategy." This strategy will be closely tied in to all grazing activities.

The mountain plover (*Charadrius montanus*) provides a recent example of the significance of proactive conservation. On September 9, 2003, the U.S. Fish and Wildlife Service (FWS) published a Federal Register notice withdrawing their proposal rule to list the mountain plover as threatened. The species had been proposed for listing in 1999 and 2002 because the best data available at the time indicated that breeding populations were declining due to the loss of appropriate habitat from grassland conversion, prairie dog declines, and agricultural practices. After collecting additional data for 4 years, the FWS determined that listing the mountain plover under the Endangered Species Act (ESA) was not warranted. The five listing factors that must be considered in the determination of threatened or endangered status are (1) present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or

predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or human-caused factors affecting the species' continued existence. A key factor to the "not warranted" listing determination was the greater involvement in mountain plover management on the part of the Federal land management agencies, State and County governments, and the private sector.

The BLM carefully coordinates with other Federal agencies, land managers, and interested public to implement appropriate special status species management. When grazing permits are issued, BLM offices are required to review the adequacy of existing environmental analyses. At this time, if it is determined that federally listed threatened or endangered species may be affected, a Section 7 consultation is performed. All interested parties, to the extent practical, have the opportunity to review, comment, and give input on Biological Assessments. Timely implementation of effective grazing decisions for correcting environmental damage may benefit wildlife and result in healthier ecosystems. If a species becomes federally listed after the issuance of a grazing permit, additional conservation measures may be added.

3.12 WILD HORSES AND BURROS

The Wild and Free Roaming Horse and Burro Act of 1971, as amended, states that wild horse and burros are living symbols of the historic West and as such contribute to diversity of life forms within the Nation. It is the policy of Congress that wild and free-roaming horses and burros shall be protected and managed for a thriving natural ecological balance within areas they were found in 1971. These Herd Management Areas (HMAs) are found in 10 western States—Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. Appropriate Managements Levels (AMLs) are or will be established on all Herd Management Areas by 2005. The estimated AML for the Bureau is 25,732 horses and 3,117 burros. Removals are conducted on HMAs that exceed these levels, and excess animals are either adopted to qualified publics or transported to long-term holding facilities in the Midwest to live out their lives. Management on the range to reduce and maintain viable populations consists of selective removals, fertility control, population modeling, gathering genetics information, and research applications.

At the end of the 2002–2003 gather season (July to February), there were 32,145 horses and 5,041 burros occupying 206 HMAs. Horses are not removed during the foaling season, March through June. Burros are not removed during peak summer months (July through August) because of the heat.

Wild horses use the same forage species—usually grasses and forbs—and water sources as domestic livestock. Wild horses and burros range significant distances from water to graze. Burros tend to be browsers, using shrubs, forbs, and some grasses. Wild horses normally move in bands, with numbers ranging from 2 to 40 animals. Burros are more solitary, but will form small bands of jennies and their offspring. Within an HMA, wild horses move into the higher country in the summer (because temperature and insects) and lower country in the winter (to avoid snow). Most of the burros are located in southern California, southern Nevada, and Arizona. Their movements are temperature-related, mostly looking for shade in the summer. During the rainy season they will disperse looking for available forage.

Wild horses and burros will affect upland and riparian areas when their numbers are not kept in balance with the available resources. Achieving and maintaining AML is an important component of any management system. A map of the herd management areas managed by the BLM is shown in Figure 3.12.1.

3.13 RECREATION

Public lands managed by the BLM provide important recreational opportunities in the western United States in the form of camping, sightseeing, hiking, horseback riding, off-highway vehicle activities, water activities, hunting, fishing, snow activities, and other specialized or newly emerging interests. The recreational setting varies from primitive, nonmotorized access onto the public lands to dispersed motorized activities and to highly developed access on paved scenic drives and overlooks. Most recreational uses depend on the natural qualities of the land and some facilities to aid in use or access. Some recreational activity includes use of livestock for riding or packing and may include grazing of those animals on the public lands.

The effect rangeland conditions have on recreation activities varies as widely as the activities vary. More highly developed recreational activities and those recreationists from local or rural areas tend to be less effected by rangeland conditions. More dispersed recreational activities tend to be more highly effected by rangeland conditions. Studies suggest that recreationists perceive in roughly equal numbers that grazing detracts from or is compatible with their activity on the public lands.

The availability of the public lands for recreation contributes to many regional economies in the West. In 2002, recreational use on BLM-administered lands exceeded 67 million visitor use days. Demand for new developed sites and facilities and greater general availability of public lands for dispersed recreational activities is increasing in some areas. Increasing demand is most evident in regions near urban areas and where populations are rapidly growing.

Concentrated recreation occurs at approximately 2,700 developed sites. Less than 1% of BLM-administered rangeland contains developed recreation sites and facilities. More than half of all recreational visits to the public lands are dispersed visits. Dispersed recreation depends on open landscapes, with few developments, that allow for self-initiated exploration and discovery. Most areas providing dispersed recreation opportunities are used for livestock grazing. Where water and adjacent riparian areas exist, recreational use occurs during all or a portion of many visits. Riparian areas account for approximately 1% of BLM-administered rangeland.

Recreational use permits are issued for competitive and commercial activities. These include off-highway vehicle races, outfitter and guide services, equestrian races, sightseeing tours, and festivals. Recreational use permits are also issued for individuals and groups at many developed sites, high-use areas, and environmentally sensitive areas. Permits may limit the number of visitors to an area at any one time. Recreation permits usually require a fee and, in 2002, brought revenues of more than \$9 million to BLM.

Public lands administered by the BLM contain diverse scenic and visual resources. In many areas, expansive views, steep terrain, colorful and varied geology, or appealing plant communities create highly scenic settings. In areas where scenery may be plain, openness and limited development create a pleasing aesthetic. These qualities attract visitors for the purpose of sightseeing, as well as to form the backdrop for many outdoor recreation activities.

3.14 SPECIAL AREAS

The Bureau of Land Management (BLM) provides special management consideration for public lands possessing unique and important historical, anthropological, ecological,

biological, geological, and paleontological features. These lands include undisturbed wilderness tracts, critical habitat, natural environments, open spaces, scenic landscapes, historic locations, cultural landmarks, and paleontologically rich regions. Management designations for public lands containing special features are created by Congress, presidential proclamation, or established under BLM administrative procedures. BLM manages these special areas to preserve, protect, and evaluate significant components of our national heritage.

3.14.1 National Landscape Conservation System

The Bureau of Land Management (BLM) provides special management consideration for public lands possessing unique and important historical, anthropological, ecological, biological, geological, and paleontological features. These lands include undisturbed wilderness tracts, critical habitat, natural environments, open spaces, scenic landscapes, historic locations, cultural landmarks, and paleontologically rich regions. Management designations for public lands containing special features are created by Congress, presidential proclamation, or established under BLM administrative procedures. BLM manages these special areas to preserve, protect, and evaluate significant components of our national heritage.

The National Landscape Conservation System (NLCS), established in June 2000 by the BLM, provides guidance, organization, and leadership for protecting many of the Nation's most remarkable and beneficial working landscapes (Figure 3.14.1). The NLCS consists of National Monuments, designated by the President, and congressionally designated National Conservation Areas, National Wilderness Areas, Wilderness Study Areas (also designated by agency), National Wild and Scenic Rivers, and National Scenic and Historic Trails (descriptions follow). The NLCS contains 828 units totaling approximately 15% (42 million acres) of BLM-managed public land—an area larger than the State of Florida. These NLCS units provide preservation, protection, conservation, and enhancement of open space; solitude; recreation opportunities; and scientific, cultural, educational, and ecological values, while allowing compatible resource uses.

NLCS remote wildlands and working landscapes, managed within the BLM multiple-use framework, provide sources of livelihood as well as havens of solitude and peacefulness. Specifically, livestock grazing, an authorized activity within the NLCS, is managed through existing applicable law, regulation, and proclamation.

The following definitions briefly describe the NLCS units:

National Monument: A National Monument is an area designated by the President, under the authority of the Antiquities Act of 1906, to protect objects of scientific and historical interest that are located on Federal lands.

National Conservation Areas: Areas are designated by Congress to provide for the conservation, use, enjoyment, and enhancement of certain natural, recreational, paleontological, and other resources, including fish and wildlife habitat. The BLM presently manages 13 National Conservation Areas encompassing a total of nearly 4 million acres.

Wilderness: An area designated by Congress and defined by the Wilderness Act of 1964 as a place "where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." Designation is aimed at ensuring that these lands

are preserved and protected in their natural condition. Wilderness areas, which are generally at least 5,000 acres or more, offer outstanding opportunities for solitude or a primitive and unconfined type of recreation; such areas may also contain ecological, geological, or other features that have scientific, scenic, or historical value. The BLM manages 148 Wilderness Areas encompassing 6.3 million acres.

Wilderness Study Area: An area designated by a Federal land management agency (Bureau of Land Management, Forest Service, National Park Service, or the Fish and Wildlife Service) as having wilderness characteristics, thus making it worthy of consideration by Congress for wilderness designation. While Congress considers whether to designate a Wilderness Study Area (WSA) as permanent wilderness, the Federal agency managing the WSA does so in such a way as to prevent impairment of the area's suitability for wilderness designation. The BLM manages 604 WSAs encompassing 17.2 million acres.

Wild and Scenic River: A river or river section designated by Congress or the Secretary of the Interior, under the authority of the Wild and Scenic Rivers Act of 1968, to protect outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values and to preserve the river or river section in its free-flowing condition. The law recognizes three classes of rivers—wild, scenic, and recreational. The BLM manages 36 Wild and Scenic Rivers (20% of the national system) amounting to 2,056 miles of river, equaling about 1 million acres.

National Scenic Trail: These trails were designated by Congress under the National Trails System Act of 1968, as an extended trail that offers maximum outdoor recreation potential and provides enjoyment of the various qualities—scenic, historical, natural, and cultural—of the areas through which the trail passes. The BLM manages portions of the Continental Divide and Pacific Crest National Scenic Trails, amounting to 641 miles of trail.

National Historic Trail: These trails were designated by Congress under the National Trails System Act, as an extended trail that follows as closely as possible the original trails or routes of travel with national historical significance. Designation identifies and protects historical routes and their historical remnants and artifacts for public use and enjoyment. A designated trail must meet certain criteria, including having a significant potential for public recreational use or interest based on historical interpretation and appreciation. The BLM manages nine National Historic Trails totaling 3,623 miles, including the Iditarod, Juan Bautista De Anza, California Immigrant, Nez Perce, Lewis and Clark, Oregon, Mormon Pioneer, Pony Express, and the El Camino Real de Tierra Adentro.

BLM manages other special designation areas outside of the NLCS including Areas of Critical Environmental Concern, Research Natural Areas, National Natural Landmarks, and National Recreation Trails.

3.14.2 Areas of Critical Environmental Concern

Areas of Critical Environmental Concern (ACEC) are BLM designations meant to highlight public lands where special consideration is warranted. The BLM establishes and manages ACECs to protect and prevent irreparable damage to historical, cultural, and scenic values; fish or wildlife resources; as well as other natural systems or processes. ACECs can also be established to protect human life and provide safety from natural hazards. The designation recognizes that an area has significant values, and that those values will be protected through planned special management measures. ACEC resources and values must be accommodated as directed through their designation documents when planning for future management actions and land use proposals.

3.14.3 Research Natural Areas

Research Natural Areas (RNAs) contain important ecological and scientific values and are managed for minimum human disturbance. RNAs are primarily used for nonmanipulative research and baseline data gathering on relatively unaltered community types. Since natural processes are allowed to dominate, RNAs also make excellent controls for similar communities that are being actively managed. In addition, RNAs provide an essential network of diverse habitat types that will be preserved in their natural state for future generations. The BLM manages 152 RNAs containing more than 300,000 acres.

3.14.4 National Natural Landmarks

The BLM cooperates with the National Park Service to implement the National Natural Landmarks Program. The program recognizes and encourages the conservation of outstanding examples of natural history. Landmarks are designated by the Secretary of the Interior and are the best examples of biological and geological features in both public and private ownership. The program includes 45 Landmarks comprising more than 4,000,000 acres.

3.14.5 National Recreation Trails

The Recreational Trails Program provides funds for developing and maintaining recreational trails and trail-related facilities. The program supports both nonmotorized and motorized recreational trail pursuits.

3.15 PALEONTOLOGICAL AND CULTURAL RESOURCES

3.15.1 Paleontological Resources

Paleontological resources are the remains of plants and animals preserved in soils and sedimentary rocks. They are important for understanding past environments, environmental change, and the evolution of life. Federal legislation (e.g., Federal Land Policy and Management Act) directs agencies to manage paleontological resources to preserve them for scientific and public uses.

The BLM has more than 25 million acres of sensitive, fossil-bearing geological deposits on western BLM-administered land. The fossils range in age from the Precambrian (more than 500 million years ago) to the recent (the last 10,000 years) and include examples of all extinct and living phyla.

Paleontological remains range from mammoths associated with the Ice Ages about 10,000 years ago to the microorganisms associated with the earliest evidence of life some 2.8 billion years ago. Paleontological items discovered on Federal land include dinosaur remains in Nevada, Utah, Colorado, Wyoming, California, and Montana; fossil fish deposits from the Green River Formation; insect and plant fossils found in Nevada; and large petrified trees in Arizona and Nevada.

Paleontological resources can be found in any sedimentary formation or soil deposition context, but badlands shale, sandstone, limestone outcrops, fault scarps, and eroded lands have a high potential for containing fossils.

3.15.2 Cultural Resources

Cultural resources consist of the fragile and nonrenewable remains of human activity. Cultural resources are divided into cultural properties and traditional lifeway values. Cultural properties consist of historic districts, sites, buildings, objects, and artifacts that are important in past and present human events. A group's shared traditional lifeway values are abstract, nonmaterial, ascribed ideas that cannot be discovered except through discussions with members of the group. A traditional lifeway value is important for maintaining a specific group's traditional system of religious belief, cultural practice, or social interaction. Lifeway values may or may not be closely associated with definite locations.

About 15,475,300 acres of the 264,200,000 acres of BLM-administered lands have had cultural resource inventories. The results of cultural resource inventories are shown in Table 3.15.2.1 and significant areas are listed by designation in Table 3.15.2.2.

Cultural resources are managed through several legal authorities, but mainly through the Section 106 (National Historic Preservation Act) compliance process. Other legal authorities include the Antiquities Act of 1906, Recreation and Public Purposes Act of 1926, Historic Sites Act of 1935, Executive Order 11593 ("Protection and Enhancement of the Cultural Environment"), American Indian Religious Freedom Act of 1978, Archaeological Resources Protection Act of 1979, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007 ("Indian Sacred Sites"), and Executive Order 13287 ("Preserve America"). Before authorizing surface disturbance, the BLM must identify cultural properties eligible for inclusion on the National Register of Historic Places and consider the effects of the proposed undertaking through the consultation process in Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This process is implemented in accordance with 36 CFR 800. In many States, procedures for adapting the process to local needs have been developed through programmatic agreements between the BLM, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation.

Section 106 of NHPA does not prohibit disturbing cultural resources. In fact, an authorized officer may permit activities that damage or destroy them. In addition, mitigation is required only if disturbance would affect a property's attributes that make it eligible for the National Register.

In recent years, with an awareness and appreciation of cultural properties and traditional lifeway values, the inventory, protection, stabilization, and enhancement of cultural resources have become integral parts of BLM practices.

3.15.3 Cultural Resources Through Time

Cultural resources in the United States extend back to the earliest human migrations to the Western Hemisphere, some 15,000 years ago. These resources range from isolated artifacts, to small-scale habitation sites, to complex agricultural villages and densely populated pueblos, to natural landscape features of special significance. Prehistoric human occupations were rarely uniform over large areas, particularly where there were significant ecological changes over short distances. Consequently, site types, sizes, and densities are extremely

variable.

Across the western region, however, water was (and continues to be) one of the most important factors affecting human settlement and survival. As such, many prehistoric, historic, and modern era cultural properties are located near or around water sources.

Prehistoric cultural resources have been organized into early, middle, and late periods, with the early period commonly referred to as Paleoindian (15,000–8,000 years ago), the middle period as Archaic (8,000–2,000 years ago), and the final period as Late Prehistoric (2,000–200 years ago).

Cultural resources from the Paleoindian period are found in high-elevation coniferous and deciduous forests as well as lower elevation plains grasslands and in areas of the desert Southwest, mainly near water sources and in alluvial and colluvial soil deposits. People surviving during this period often hunted megafauna, such as mammoth and giant bison, that are now extinct.

Prehistoric cultural resources from the Archaic period reflect a shift from an exploitation of megafauna to an emphasis on hunting and collecting a variety of resources, such as fish, large and small game, and edible plants and nuts. Hunting sites, plant gathering sites, and temporary camps are probably scattered in most western ecosystems.

Beginning about 2,000 years ago, the Archaic period phased into the Late Prehistoric period with the introduction of agriculture, ceramics, the bow and arrow, and sedentary lifeways as major adaptive elements. In general, site types and patterns were similar during archaic times except where lifeways shifted to an agricultural base.

The Prehistoric era began blending into the Historic era in 1492 when Europeans started migrating to and settling in the Americas; however, the Historic era did not start at the same time everywhere across the West. In the Southwest, the historic period began in the 1500s with the Spanish *entrada*. In the Pacific Northwest and the Great Basin, significant Euro-American migrations did not begin before the middle of the 1800s; in the Rocky Mountains and Plains the Historic era did not begin until the exploitation of the region by the fur trade in the late 1700s and early 1800s. As many Euro-Americans moved north and west, they took with them a lifeway emphasizing livestock ranching; in the Southwest, ranching began as early as the 1600s, whereas in the northern areas it began in the 1850s. The identity of many small towns and communities in the West is associated with this tradition.

Cultural properties related to the Historic era continue to include indigenous remains such as Indian agency buildings and missions. A majority of historic resources in the West, however, are artifacts, sites, and landscapes associated with early Euro-American exploration, the fur trade, mining, logging, ranching, farming, transportation, manufacturing, and early urban development.

Beginning about 1900, the Historic era merged into modern times. At the turn of the century, the picture of the "Wild West" was changing; the people and places that characterized the "western frontier"—the cowboys, outlaws, Indians, prospecting miners, and military cavalry—were all fading into memory as stories and icons of a bygone era. American society began to shift from a largely rural society to a more urban society. People moved off of farms and ranches into the big cities with increasing industrialization. Native Americans were settled onto reservations with a government policy of assimilation and acculturation. Many mining towns boomed only to become busted ghost towns within a few decades.

These recent changes can be seen in an array of cultural resources and traditional cultural properties. Depression and later era mining camps, abandoned rural hamlets and post offices, World War II bases and installations, artifacts and objects left behind by migrant sheep herders, Civilian Conservation Corps construction works and camps, or even the Interstate

Highway System, all document the changing West.

Despite attempts at assimilation and settlement, many Native American tribes have held onto their traditional lifeways and beliefs. They have continued to use their environment to gather native plants, animals, and minerals for use in religious ceremonies, folk medicine, subsistence, and crafts. They have maintained treaty rights into the Modern era to exploit traditional plant gathering and hunting areas. For Native American tribes and individuals, any environment can contain specific places that are significant for spiritual purposes. Those sacred places embodying spiritual values are often associated with indigenous rock art, medicine wheels, rock cairns and effigy figures, spirit trails and spirit gates, caves, rock formations, and springs or lakes. Contemporary use areas are associated with traditional plant and mineral collection locales, vision quest sites, sun dance grounds, shrines, and traditional trails.

The traditional western ranching lifeway also has an associated landscape characterized by livestock on the range, developed springs, wells and watering tanks, and fencelines. It also contains a series of potential traditional cultural properties that include wild horse traps, corrals, ranch houses, sheep herding camps, shearing pens, loading chutes, grange halls and community centers, and one-room school houses. Notwithstanding the radical and sometimes rapid changes the West underwent through the 20th century, western ranching lifeways carried forward a significant part of the world's image of America and America's image of itself. Modern western ranching communities have traditional activities, social behaviors, and values that are part of the Nation's historical, cultural, and natural heritage.

3.16 ECONOMIC CONDITIONS

General Economic Conditions and Trends

The population of the western United States has been growing faster than any other region of the country in both urban and rural areas. During the 1990s, the rural West grew by 20%—twice the national average. Moderate climates, scenic features, and other natural amenities spurred much of this growth, especially rural growth in the Rocky Mountain West (USDA Economic Research Service 2003).

This population growth has been accompanied by economic growth and diversification of western States' economies. The agriculture industry in general, and livestock production in particular, has declined in relation to the growth of other industries in the region (USDA ERS 2000). However, livestock production remains an important contributor to many rural economies of the West, particularly in areas where population growth has not occurred or where populations continue to decline.

While agriculture has declined in relative importance, other industries have increased their importance to rural and urban areas of the West. With respect to economic uses of public lands, outdoor recreation in particular has increased in importance (USDA ERS 2002). Outdoor recreation of all types, including hunting, fishing, wildlife viewing, OHV use, mountain biking, hiking, camping, have been contributing to significant increases in spending and employment. Many of the multiple-use management conflicts occurring on public lands in recent years are due to increased recreation use in relation to other activities such as livestock grazing.

Livestock Grazing on Public Lands

BLM grazing statistics for 2002 show there were 18,142 permits and leases for livestock grazing with a total of about 12.7 million active AUMs (PLS 2002) in the 15 western States. Most of these permits and AUMs are located in the 11 western-most States, while Nebraska,

North Dakota, Oklahoma, and South Dakota have relatively few permits and leases. Because many livestock operators hold more than one permit, the total number of operators is less than the number of permits. About 95% of the operators graze cattle, 8% graze sheep and goats, and another 7% graze horses and burros (PLS 2002). These percentages do not add to 100% because many operators run more than one kind of livestock. Table 3.16.1 shows, by State for 2002, the number of permits or leases and AUMs.

Of the 12.7 million active AUMs in 2002, about 4.8 million were in nonuse, for a westwide average of 38%. Nonuse ranged from 23% in Montana to 52% in California. Many factors contribute to operators' reasons to take nonuse, but drought and financial conditions are among the most important. Table 3.16.2 shows the trend since 1996 of the number of permits or leases, active AUMs, and nonuse AUMs.

Table 3.16.2 shows a downward trend in numbers of permits or leases and active use, as well as an increase in nonuse. The downward trend in numbers of permits or leases and active use reflects the continuation of a decades-long trend both for public lands livestock operators as well as the livestock industry as a whole. The industry as a whole continues to experience consolidation and a trend toward fewer but larger operations.

The livestock-raising subsector of the agriculture industry in the western United States still depends on public lands in a variety of ways, including local economic activity, types of animals grazed on public lands, rancher dependence on Federal forage, and size of ranch operations with Federal permits.

In a recent study of public lands and western communities, the Economic Research Service grouped 416 counties in the 11 western States according to the share of total countywide AUMs estimated to come from Federal lands, including both BLM and Forest Service (USDA ERS 2002). That analysis shows that about 9% of all counties are 50–100% dependent on public lands, whereas 91% were less than 50% dependent on public lands (see Table 3.16.3). Counties showing more than 50% dependence on Federal lands tend to be among the least densely populated counties.

The importance of Federal rangelands also varies by the type of animal grazed. In a 1989 study of forage demand by cattle, Federal lands (including both BLM and Forest Service) were estimated to make up about 7% of beef cattle forage and about 2% of the total feed consumed by beef cattle in the lower 48 States (Joyce 1989). In the 11 western States, Federal land grazing was estimated to make up about 25% of beef cattle forage. About a third of beef cattle in the West graze at least part of the year on Federal rangelands. In a 1991 study of forage demand by sheep, Federal lands grazing was estimated to make up less than 20% of forage demand (Shapouri 1991).

Rancher dependency on Federal forage is another measure of the importance of Federal rangelands. Average dependency of permittees on Federal forage is highest in Arizona (60%) because of the large amount of Federal land in relation to private lands, the availability of yearlong grazing, and the relatively high number of operators with both BLM and Forest Service permits. Montana has the lowest average dependency (11%) because it has seasonal grazing and more private than Federal forage. Table 3.16.4 shows average dependency for operators in each of the 11 western States. Note that these are statewide averages; individual rancher dependency within each State would vary substantially.

Characteristics and Profitability of Livestock Operations on Public Lands

Public land ranches are highly individualized operations, but there are also some similarities from which general characteristics can be drawn. Ranches in the western United States, where BLM public lands ranchers are located, tend to be larger than operations in other regions of the country. The majority are cow–calf operations that operate seasonally on public lands, although operations in some areas are year-round. The average size of cow–calf

operations in the West is 146 bred cows and 132 weaned calves. The region with the next highest average size, the Southern Plains, had an average herd size of 79 bred cows and 60 weaned calves. Although 10% of the nation's cow-calf operations are in the western United States, they produce 20% of the weaned calves (Short 2001).

An earlier study of cow-calf production costs made a further distinction between operations with Federal permits versus those without permits (USDA ERS 1991). In general, permittees were found to have lower per-cow cash receipts than nonpermittees, but they also had lower per-cow cash expenses and lower capital expenses. Overall net cash returns were higher for permittees, on average, than for nonpermittees. The more recent study of cow-calf production costs (Short 2001) shows that cow-calf operations in the West generally have some significant cost advantages over operators in other regions, though these data are not broken out for permittees and nonpermittees.

Ranching tends to be a low- or negative-profit enterprise, and public land ranchers are no exception. Recent cow-calf production costs and returns data show that operations in all regions had, on average, negative returns above operating and ownership costs (i.e., all costs), but in the West, these negative returns were lower than for other regions (Short 2001). Considering strictly returns above operating costs (i.e., not including ownership costs), the western U.S. had, on average, higher positive returns than all other regions.

Others have studied profit motives of ranchers, and public lands ranchers in particular. Van Tassell et.al. (2001) found that profitability is one among several issues considered by ranchers with public lands grazing permits. Torell et.al. (2001), found that in many instances, profit ranks behind such things as family, tradition, and a desirable way of life as factors in ranch purchase decisions. Torell notes that studies have shown that western ranches will not "pencil out," and that there seem to be many reasons other than profit that motivate ranchers to stay in business.

Tanaka and Gentner (2001) surveyed public lands ranchers and gauged their responses to three policy questions related to public land grazing. They grouped the respondents into eight categories based on specific characteristics and noted each group's response to potential policy changes to see if they differed according to each group's motivations for holding Federal grazing permits (see Social Conditions section of this DEIS for further discussion of these groups, or "clusters"). One interesting finding was that for all eight groups, the objectives of "owning land and ranch is consistent with my family's tradition, culture, and values," and a "ranch is a good place to raise a family" ranked first or second as the most important reasons for continuing in ranching, ahead of the profit motive.

In summary, it seems that profit is one of many reasons that ranchers may continue to hold Federal grazing permits, and that the importance of profit varies by type of operation.

3.17 SOCIAL CONDITIONS

Demographic Trends

The West is the fastest growing region in the United States. Table 3.17.1 indicates that the populations of all but two of the States in the West grew at rates greater than the nation as a whole from 1990 to 2000. The populations of five States grew faster than 25% during this period, with Nevada growing by more than 66%. In addition, the West as a region grew faster than other regions in the country. While the nation as a whole grew about 13%, the West grew more than 19%, far outpacing the Northeast and Midwest in population growth.

As a region, the West is the most urbanized area in the United States. Urbanization is the proportion of a population that lives in urban areas. Table 3.17.2 shows that more than 88% of the population of the West lived in urban areas in 2000. This proportion is even greater

than the heavily urbanized northeastern region. Nationally, 79% of the population lived in urban areas in 2000. Seven States in the West exceeded the national urban proportion, with six States having more than an 80% urban population. This proportion grew rapidly for some western States. Urban populations in Idaho and Oregon grew at 9% and 8%, respectively, between 1990 and 2000. Where growth occurs will significantly determine its effect on uses of and involvement in the politics of public lands. Growing pressure to use public lands for recreation and solitude will continue to come from population growth in both urban centers and rural places.

A relevant trend is the relation between the amount of public land and population growth in western counties. In creating a typology of rural counties, the Economic Research Service (ERS) of the U.S. Department of Agriculture designated a county as a "Federal Lands County" if federally owned lands made up 30% or more of a county's land area in 1987. In the eleven western States in 1994, ERS classified 89 counties as metropolitan counties; 128 as nonmetropolitan, nonpublic land counties; and 194 as nonmetropolitan, public land counties (Cook and Miser 1994). Population growth rates from 1990 to 2000 differed for these three categories of counties. Table 3.17.3 displays population change during this period for metropolitan, nonmetropolitan, and nonmetropolitan public land counties in the West. The proportion of the population in western States accounted for by metropolitan counties was stable at about 87% from 1990 to 2000. However, nonmetropolitan public land counties grew by 25% more than the period, much faster than the other two types of counties. While the West was growing rapidly as a region, public land counties were growing faster as a group than other counties. Such growth is changing the social context of ranching throughout the West (Sheridan 2001).

Ranchers

These population trends, their cause and numerous arguments concerning their effect on communities are well documented. Migration is clearly the major force underlying this population growth (Nord and Cromartie 1997; McGranahan 1999). In addition, the role of physical amenities, quality of life, proximity to designated wilderness, and other arguments are frequently forwarded as both a cause of migration to public land counties and as a policy goal (Clark and Murphy 1996; Duffy-Deno 1998; McGranahan 1999; Deller et al. 2001; Hansen et al 2002; Lorah and Southwick 2003).

The effect of these population changes on ranches is difficult to generalize because ranchers and ranch operations in the West present a very heterogeneous population. The local and regional variations in terrain, climate, and ecological systems are almost matched by local and regional differences in the social, economic, and institutional contexts within which ranches operate (Gentner and Tanaka 2002). Each ranch has a unique economic structure, participates in a certain type of regional economy, has a particular type of family relationship to the business, and maintains certain types of ties to a local community and a larger regional, possibly urban, area (Darden et al. 2001). Ranchers make decisions in different ways for different reasons, and will therefore experience differing social effects from changes in their economic, social, and institutional relationships. This heterogeneity must be accounted for to understand potential social effects on ranchers, their operations, and their communities.

Gentner and Tanaka (2002) provide a comprehensive classification of public land grazing permittees. A random sample of 2,000 ranchers was drawn from more than 21,000 Bureau of Land Management (BLM) and U.S. Forest Service (USFS) permittees and evaluated by using a mail survey. A set of rancher attributes was used to capture goals and objectives of ranchers, educational attainment, business organization, number of livestock, sources of labor, income by source, debt load and financial stress, and other social and economic indicators. Cluster analysis identified eight groups of ranchers on the basis of these attributes. Two general groups emerged—hobby ranchers (50.5%) and dependent ranchers (49.5%). The

two main groups are differentiated most notably by their dependence on ranch income for their livelihoods: the hobby group received less than 22% of their family income from the ranch, whereas the dependent group received more than 72% of their income from the ranch (see Table 3.17.4). This detachment of the ranch operation from the majority of household income for more than half of this sample has social ramifications. Part-time and hobby ranchers may retain attitudes and local social ties similar to full-time ranchers and be relatively immune to the economic fluctuations of ranching. The motivation and ability of these ranchers to remain in ranching even under difficult economic circumstances may actually be higher than those relying directly on the ranch for their livelihood.

The general characteristics and percentage of the Gentner and Tanaka (2002) sample for each group are as follows:

- Small Hobbyist (11%): Small operations, small herds, lowest dependence on ranch income, high dependence on off-ranch income, highly educated, slightly lower dependence on Federal forage.
- Retired Hobbyist (18%): Older, small operations, higher dependence on ranch income, very high dependence on retirement income, slightly lower dependence on Federal forage.
- Working Hobbyist (15%): Highest dependence on off-ranch income, youngest, small operations, ranching the longest, highest dependence on Federal forage among hobbyists.
- Trophy Hobby Rancher (6%): Large operations, large deeded acreage, highest use of hired labor among hobbyists, highest reliance on corporate organizations among hobbyists, highly educated.
- Diversified Family Rancher (13%): Dependent on ranch income, more diversified into other nonranching income sources, smallest herd size among professional ranches, relative dependence on family labor, highest reliance on sole proprietorship as business organization, higher reliance on Federal forage.
- Dependent Family Rancher (19%): Highest dependence on ranch income, lowest diversification into other income sources, least educated, highest debt load, highest reliance on formal partnerships for ranch business organization, higher reliance on Federal forage.
- Corporate Rancher (13%): High reliance on ranch income, largest herd size, large deeded acreage, lowest reliance on Federal forage among professional ranches, high reliance on corporations as business organization.
- Sheep Herder Rancher (4%): Depend on sheep for primary ranching operations, large herds, large deeded acreage, highest use of hired labor, highly dependent on ranch income, highest dependence on Federal forage.

Clearly, permittees have very different attributes, motivations, and goals. An important question concerns whether ranchers seek to maximize profit or whether other factors as important or even primary in explaining why ranchers continue in a difficult environment. Many studies lead to a firm conclusion that most ranchers do not hold maximizing profit as their sole, or even primary, goal in ranching (Smith and Martin 1972; Harper and Eastman 1980; Bartlett, et al. 1989; Torell et al. 2001; Rowe et al. 2001). Smith and Martin (1972) used such terms as "farm fundamentalism" to describe social motivations for ranching when economic returns were consistently poor. Bartlett et al. (1989) found that an ethic of the land and the role ranching plays in family life were important to Colorado ranchers. Rowe et al. (2002) provided a confirmation that rural ways of life coupled with family concerns were

more important to ranchers in two Colorado counties than profit alone.

Gentner and Tanaka (2002) found that professional ranchers valued family tradition, ranching as a good way to raise a family, living closer to friends and families, desire to pass the ranch on to children, and return on investment more than did hobby ranchers (See Table 3.17.5). Maintaining a family tradition and passing the ranch on to children were the most highly ranked goals for both categories of ranchers, resulting in no significant statistical difference between categories. Other goals did show significant differences. Professional ranchers strongly believed that ranches were a good place to raise a family, to stay near friends and family, as well as to pursue profit. Hobby ranchers did not hold these goals as strongly.

Significant family labor is required for some of the ranchers in this sample. Table 3.17.6 shows that most of the professional ranchers require from 20 to 27 months of family labor to run the ranch. This is mixed with very different levels of hired labor. Diversified and dependent professional ranchers use little hired labor in relation to use by corporate and trophy ranchers. The nature of sheep ranching requires significant hired labor in addition to the two full-time family laborers required to run a modern operation.

The social environment of ranching therefore has multiple dimensions. With the exception of the trophy hobbyists, the permittees in the Gentner and Tanaka survey had family tenure on their ranches of well over 20 years, with most having tenure of 30 years or more. Most of these permittees have ranched as Federal grazing permittees for decades and are familiar with the growing complexities and stress associated with being a public land grazer.

This willingness to accept low economic returns to meet other goals is also reflected in the economics of ranch real estate. Torell and Bailey (2000) estimated that only 27% of the value of New Mexico ranches is related to their livestock productivity. Thus, recent buyers of New Mexico ranches are motivated not by their value to produce livestock, but rather by a host of other values commonly associated with ranches. Torell and Bailey found wildlife amenities, proximity to a population center, and type of terrain were more important determinants of ranch sale prices than cattle operations. These new ranchers, along with new residents, bring different demands for space as an amenity (Huntsinger et al. 1997; Bastian et al. 2002; Inman et al. 2002). Even in this environment, many ranches continue to operate with the knowledge that the ranch can be sold at a significant premium to people with other interests in the land.

Communities

As mentioned previously, populations in the rural West have grown dramatically over the last decade. Population growth complicates any assessments of how changes in public land policy might affect ranches and the communities in which they operate. To understand the broader implications range policy changes may have for a community, a discussion of four general social forces affecting communities is necessary. These four community social organization processes occur within and are affected by the social interactions in rural communities, their social and economic histories, and other factors.

Differentiation is the process of expanding the range of values and interests represented in a community. In the West, this is presently influenced by population growth and the decreasing reliance on traditional resource industries for employment. As population increases, social diversity increases and brings about differentiation in the needs, demands, and expectations people have of their community. Economic and employment changes can result in greater differentiation of occupational characteristics in the community, along with shifts between interest groups that enter into community interaction. This process often produces short-run social conflict as those seeking some ideal about their rural community clash with those who lives are not compatible with that ideal (Walker 2003). In addition, conflict over how to view "nature," ranching, and landscapes in general seems to be inherent in the process of

differentiation (Chilson 1997; Eisenhauer et al. 2000; Hull et al. 2001; Sheridan 2001; Paolisso 2002; Bieling and Plieninger 2003).

Extra-local linkage is a process through which resources and demands flow back and forth between communities and the larger society. This is best viewed as the extent to which local institutions, economies, and decision makers are influenced by people and social processes outside of the community, and the extent to which they might call upon those resources for support. Issues like public land management are highly visible and increase local linkages to extra-local social units. In this sense, public land controversy engenders a higher degree of extra-local linkages to outside groups. Population growth stemming from the conscious choice to move to a public land community implies that people will bring their extra-local social networks with them, complete with values, attitudes, and beliefs. Further, the very nature of the Federal public land management process engenders significant extra-local involvement in decisions affecting local communities. The opportunities of many different groups, local and extra-local, to become directly involved in decisions affecting even small changes in management is much greater in this arena than are opportunities to affect private land decisions.

Stratification refers to the differential distribution of access to resources for meeting needs among populations. This is one of the most important processes—perhaps the most important process. It has wide-ranging implications for local populations. A primary social process affected by public land policies is the distribution of access to local economic opportunity. As traditional resource industries (timber, mining, ranching) are supplanted by the new resource industries (commodification of nature and its amenities), the economic opportunity structure, family status, and arrangements of social power in communities change as well. For example, ranching communities have historically been stratified by access to and control of property (Stinchcombe 1961). Ranchers continue to hold property in greater proportion to most local people, but many landowners now have significant access to land, wealth, and political power, both local and extra-local. In addition, this change is accompanied by a shift in the nature of the local economy. This shift puts significant pressure on ranchers and other residents: "The irony of the New West is that newcomers attracted to diverse imaginaries of rural lifestyles often make real rural livelihoods unavailable" (Walker 2003; see also Jobes 1987). Thus, significant dimensions of stratification now include access to employment that allows families to live well and remain in the community.

Integration is the process by which relations among people in a community are coordinated and interconnected. This is the most complex and rich aspect of social organization, for it focuses on the process of organizing and focusing the activities of various elements of a community. Cohesion, attachment, density of acquaintanceship, social capital, and sense of place are all examples of social relations either derived from or dependent on social integration. Increased differentiation and extra-local linkages present specific challenges for integration, but also carry the potential for new forms of integration to emerge. The degree of integration in a community before the implementation of a policy determines, to a great degree, the ability of that community to take any actions necessary to manage change (Harp et al. 2001). Sufficient community integration is a necessary condition for communities to take action to mitigate social and economic effects of policy decisions (Wilkinson 1970, 1991). Low levels of integration are often associated with community discussions and decisions being dominated by small groups whose interests may not be attributable to the community as a whole. This is historically the situation in rural communities dominated by one industry, such as timber. However, the question is less one of dominance than it is one of the generalized legitimacy of the decisions being made. Hence, a small group may make a decision and the community as a whole generally agrees with both the process and the outcome of the decision. Thus, social integration plays a part in the legitimization of the decisions.

These organization processes overlap and interact, sometimes working in concert and other times not. Examples of their application to ranching communities are presented in Table 3.17.7. Few empirical studies of how these processes play out in ranching communities are available. These processes and their relations to local economic processes in ranching are reviewed in Harp et al. (1998).

One related example is a study that examined the relations between social network ties and community cohesion, integration, and attachment in Owyhee County, Idaho (Harp et al. 2001). Seven communities were examined and survey methods were used to estimate the importance of social networks and to construct scales of community cohesion, community integration, and community attachment. Cohesion is high when social relations between people produce a sense of belonging to a group with shared beliefs and common behavioral assumptions, and a feeling of recognition as members of that group (Buckner 1988; Jensen 1998; McClure and Broughton 2000; Rajulton, et al. 2003). In essence, people come to see themselves as part of a larger social group that shares their own beliefs and actions. Integration is high when people do not feel isolated or anonymous in their community, and can participate actively in community life (Brown et al. 1989). Activities that are evidence of integration include visiting, and borrowing and lending between neighbors. When integration is high, people are more willing to trust their neighbors in both a social and material fashion (Brown 1993; Cowell and Green 1994). Attachment is high when people feel a strong sense of social connection to their community that makes them reluctant to leave or withdraw from social relations (Kasarda and Janowitz 1974; Goudy 1990; Brown 1993; Liu et al. 1998).

Social networks are patterns of repeated relations between social actors. They have a number of conceptually useful attributes, such as the number or strength of social ties to family and friends. The standard measure of "density of acquaintanceship" was applied. This is the most empirically important single network measure used in community research. It is measured simply by the proportion of close friends a respondent has living in his or her community. The higher the proportion, the more "dense" the local social network for an individual. In other words, the more friends you have where you live, the more likely you will be to see your community in a positive light and choose to interact with people there (Goudy 1990; Stinner et al 1990; O'Brien and Hassinger 1992; Beggs et al. 1996; Sharp 2001). In addition, respondents were asked whether they had a friend in the ranching business or one who ran a local business. This tied these economic activities to local social networks.

Having more of your friends living in the same community as you, having ranchers and local business owners in your social network, being White, and which community you live in all increased respondents' beliefs that theirs was a cohesive and highly integrated community. The significant indicators of attachment attitudes were the size of community the respondent resided in until age 18, respondent's community, density of acquaintanceship, close friends having a business, and how far they drove to work. Hence, the positive social role of ranching was to raise the attitude that the community is a cohesive and integrated place, though not for non-Whites. This is not surprising in the West, given that Latino and Hispanic people are generally stratified into a lower visibility rank with little social or political power. Moreover, this would not be a surprising result even if ethnic groups were themselves ranchers (Raish and McSweeney 2001). Finally, ranching had little effect on the degree to which respondents felt attached to their communities.

There is little doubt that public land ranching and its relation to the land is a social process (Huntsinger and Hopkinson 1996). The relation between social, economic, and ecological issues has been recognized for many years (Adams 1916; Simpson 1975; Abruzzi 1995; Raymond 2002). In many small communities, ranchers play an important social role as decision makers, volunteers, elected officials, and as socially relevant commodity interests. As populations grow, ranches change hands, and this generation of ranchers fades, this role

will change. However, the need to recognize community social organization in making management decisions remains important (Curtin 2002).

National Attitudes

National attitudes toward ranching in general tap into social and political institutions that may affect public land grazing management. Three studies of attitudes toward grazing are pertinent, although only one is national.

Brunson and Steel (1996) used a national sample and two Oregon samples to examine how attitudes toward Federal rangeland management vary across the country. First, they split the national sample into eastern and western groups. They found slight differences in regional variations of attitudes and concluded that "...differences in support were slight, and never did one region support a policy that the other rejected."

Second, they used the two samples from Oregon to create comparisons among the Nation, western Oregon, and eastern Oregon. This allowed for comparisons between urbanized areas in general and rural regions where rangelands are more prominent in the landscape and in the local economy. They concluded, "In all cases, residents of the grazing-dependent region of eastern Oregon were more supportive than the national or statewide samples of statements advocating traditional or utilitarian uses, and less supportive of statements urging greater protection of non-forage resources."

Finally, Brunson and Steel concluded that attitudes toward range management are frequently simplistic, consisting of dichotomies of good and bad. Thus, entire sets of attitudes were reduced to a "...poorly developed cognitive structure rooted in simplistic, value-based ideas about the goodness or badness of range practices and conditions." Part of this finding is related to a lack of specific knowledge of rangelands on the part of many people. This produces a disconnection between their attitudes and what they actually know about the issue (Lybecker et al. 2002).

Brunson and Gilbert (2003) studied visitor attitudes toward grazing in the Grand Staircase-Escalante National Monument, Utah. They looked at the relations between visitors' personal characteristics and their reports of how livestock grazing and multiple-use management affect recreation experiences. Hunters saw more effects from grazing but were not put off by them, whereas hikers saw fewer effects but were more likely to say that their experience was degraded by seeing evidence of livestock grazing. Designation of the area as a monument was seen to have little direct effect on attitudes.

Mitchell et al. (1996) found that almost equal proportions of visitors to a Colorado national forest believed that the presence of grazing enhanced their visit (34%) or detracted from it (33%). Local residents, rural residents, and campers at developed campsites were more tolerant of grazing than those using more remote areas.

Finally, many organized public interest groups apply pressure to remove grazing from public land. This debate is certainly polarized (Knight et al. 2002; Wuerthner and Matteson 2002). Nonetheless, this has an effect on local areas in that national, regional, and local groups seeking to reduce or end grazing on BLM and U.S. Forest Service lands are involved routinely in political and legal processes down to the allotment level. The effect of these activities on ranching communities is difficult to quantify, although they may be anecdotally cited by local ranchers as a source of personal and family stress.

Many advocates for the end of public land grazing argue that ranchers often have social and political clout greatly out of proportion to their numbers (Fennemore and Nelson 2001). There is a general assumption that agencies, particularly the BLM, are "captured agents" of the livestock industry and have been since their inception (Cawley 1993; Klyza 1994; Wilkinson 1994). This approach assumes that the agencies were set up to protect livestock industries and that they continue to do so. Though this attitude still prevails, it has

recently been challenged with evidence from the creation of the BLM (Welsh 2002).

All of these diverse attitudes compel various national, regional, and local groups to become involved with public land grazing and the ranching industry in many ways. In general, they have significantly raised the level of scrutiny characterizing grazing decisions. It is fair to generalize a conclusion that these attitudes and activities have an effect on ranchers, communities, and larger social institutions, but that this effect is difficult to discern or estimate.

Case Study of a Small Community: Leadore, Idaho

Many permittees and a few others comment frequently about the role ranching and public land grazing play in the economic and social stability of their communities. This short case study of Leadore, Idaho, is intended to illustrate how the social process discussed in this section can be applied to a very ranch-dependent community in a concrete fashion.

Leadore, Idaho, is situated in the southern reaches of the Lemhi River valley in Lemhi County. The Lemhi Mountains sit to the west of Leadore and the Continental Divide and Montana border it to the east. It is a fairly isolated area about 45 miles south of the county seat in Salmon and about 120 miles north of Idaho Falls. The terrain consists generally of river bottoms, sage steppe and forested slopes at higher elevations. The Bureau of Land Management and U.S. Forest Service manage the majority of the land in the area. Leadore's mining heritage is long gone, and the geography remains dominated by cattle ranching.

Idaho's population growth of recent years has not affected Leadore to the extent it has the remainder of Lemhi County. While Lemhi County as a whole grew 13% from 1990 to 2000, Leadore's growth was slower, at 7%. The Patterson area of the county is even more remote than Leadore, yet its population grew even faster, at 27%. Growth, even at low levels, will increase social differentiation within the community. People moving to Leadore include retirees and the wealthy. These groups bring potentially differing perspectives and ideas to the community.

The economic and social influence of ranching in this area is significant. It is the primary axis defining stratification in the community. According to the 1997 Census of Agriculture, 36 of the 40 farms (90%) in the Leadore postal code area sold cattle and calves; for 22 of the farms (55%), these sales exceeded \$50,000. Few agricultural products other than cattle and sheep are sold from this area, with the possible exception of buying or selling hay. Total agricultural sales were greater than \$100,000 for 30% of the farms.

In 1991, ranching was estimated to constitute 85% of the direct and induced earnings in the Tendoy-Leadore area, and 77% of direct and indirect employment (Robison 1997; Harp et al. 2000). More than 70% of the jobs held in the area by residents were related directly or indirectly to agriculture. Retail, restaurants, and some small manufacturing augment the Federal, State and local government employment in the area.

Interviews reported in that research confirmed that almost all commercial agricultural activity derived from cattle ranching. Direct interviews with producers and others estimated the production cow herd to be just more than 14,500 head in the Leadore Census subdivision in 1992 (Harp et al. 2000). At that time, dependence on Federal forage was estimated at 28%. This was split almost evenly between BLM and U.S. Forest Service permits. Since that time, a considerable number of ranches have been consolidated. Recent interviews indicate that one person has purchased all or part of six ranches in the last decade and consolidated them into one operation. Another consolidation in the area combined four ranches. Many of the previous owners and their families are no longer in the community. This is changing the nature of economic stratification in the community.

This focus on ranching has an effect on extra-local ties. Many of the challenges to BLM and Forest Service grazing come from conservation and environmental groups well outside of the local area. In addition, ranchers have social and economic ties that take them well outside of the community in the process of doing business.

Community integration processes such as cohesion and community actions are identifiable as well. One of the dominant social features of Leadore is its social commitment to support a K-12 school district, Southern Lemhi District 292. This is a small, rural district with a predominantly agricultural tax base. Table 3.17.8 displays enrollment, graduates, and local tax support for the South Lemhi and Salmon Districts of Lemhi County, and for the State of Idaho as a whole. School enrollments fluctuated from a low of 115 to a high of 171. Similarly, the number of graduates ranged from 7 to 23 over the period. This district has two elementary schools and a high school, with a total of 16 teachers and 1 administrator. In addition, it is not a wealthy district. Table 3.17.9 shows that local taxes per average daily attendance (ADA) are well below the State average for Idaho. Although low in relation to the State, local taxes are roughly equivalent to the other major district in the county in Salmon. Leadore's enrollment is very low in relation to its tax base, with \$421,148 of base per ADA, whereas Salmon (a much larger community) has \$340,254 per ADA.

The seasons of ranching and those of the school are primary points of social organization in this community. The dominance of ranches, both economically and socially, fosters a common social view that the entire community's social future is tied to the fate of ranchers. For example, everyone feels exhausted during calving and its progress dominates discussion at school athletic events. Even for those who own no cattle, social discourse can often consist of talking about cattle. Grappling with the challenges of ranching becomes a social event that fosters a sense of integration and ultimately a sense of community. The social fate of the school district is also seen as being tied to ranching. This is not a fiscal issue. Someone will own the land and pay the taxes to the district. Rather, people in Leadore credit ranchers with a willingness to volunteer for many roles in the schools, including service on the school board. People find the resources to support sports teams and other activities. The reality of social cohesion is apparent in the willingness of the community to act to maintain its social relations regarding the school and the ranching industry.

Both ranchers and other community members firmly believe that the combination of ranch families, community cohesion, and a social commitment to Leadore as a ranch community provide the social organization necessary to maintain the school district. The view held by many permittees is that ranching is a source, if not the source, of social and economic stability for their communities. The ability of ranches to keep paying the taxes and contributing time and other resources to keep a small school district functioning reinforces this view. They also firmly believe that the economic loss of the ranches might keep the local tax base intact but that the school itself will not survive. Put another way, the social stability of the community depends on who is operating the ranch rather than on who owns the ranch.

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4.0 ENVIRONMENTAL CONSEQUENCES

Chapter 4 describes the effects on the human environment of the Proposed Action and alternatives described in Chapter 2. The human environment is interpreted comprehensively to include the natural and physical environment and the relationship of people within that environment. Environmental consequences are usually described as being direct or indirect. Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action, and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may be induced changes. Effects include ecological, aesthetic, historic, cultural, economic, social, or health. Effects include both beneficial and adverse effects.

Many of the proposed changes are largely administrative and would have little direct effect on the environment. They are intended to improve agency administrative efficiency and effectiveness, improving consistency across the BLM or meeting other nonenvironmental objectives. This should result in management decisions that have greater support and sustainability. They may, however, result in indirect effects on the physical, biological, social or economic aspects of the environment.

Because these are regulatory proposals, BLM does not have site-specific information relating to their application on the ground. As a result, the impact analyses are necessarily general and programmatic. If a key element as listed in Chapter 2 is not addressed, then it has been determined that it has no direct or indirect effect.

4.1 ASSUMPTIONS

The following general assumptions were made for purposes of analysis of direct and indirect effects of the proposed action and alternatives. Many of these assumptions represent general trends and are not intended to be precise forecasts of the future.

- The time periods for analysis are
 - Short-term—5 years
 - Long-term—20 years
- BLM budgets will be flat over the 20-year analysis period.
- There will be no change or a slight decline in demand for forage for livestock over the analysis period.
- There will be continued population growth and pressure on public lands for multiple uses.
- Recreation use on public lands will continue to increase.
- Water demands will exceed supplies and there will be continued drawdowns.
- There will be periods of drought.
- The number of species listed under the Endangered Species act will continue to increase.
- Invasive species will continue to spread.

- Wildfire risk and frequency will increase.
- Public interest in archaeological sites and in heritage tourism will continue to increase.
- BLM will achieve "appropriate management level" in the wild horse and burro program by 2007.
- There will be no significant changes in the laws governing public lands.
- PM10 air quality problems will continue to increase in the West.
- There will be continued increases in energy–mineral development (regionally significant in some areas).

4.2 ALTERNATIVE ONE: NO CHANGE IN REGULATIONS (NO ACTION)

The direct and indirect effects on the human environment of the continuation of existing grazing regulations as outlined in Chapter 2.1 is presented in this section.

4.2.1 Grazing Administration

The present grazing regulations provide some opportunities for cooperative stewardship of public land resources. However, some of the administrative mechanisms for assessing and changing grazing management to achieve desired conditions on public rangelands are neither practical nor efficient and, as a result, do not encourage the development of partnerships. Some elements of the present regulations, such as the provisions on range improvement ownership and the 3-consecutive-year limit on nonuse, discourage or impede cooperative working relations with the permittees or lessees. Consideration of economic and social issues in the NEPA document associated with changes in grazing use is not prescribed or consistently applied. There are also inconsistencies in other processes, including cooperation with State, County or locally established grazing boards, providing review opportunities to affected permittees or lessees and the interested public on biological assessments and evaluations, and data used to support rangeland health determinations. Also, the present regulations do not conform with the 10th Circuit Court decision regarding Conservation Use.

The BLM would continue to use an interdisciplinary team approach to identify and analyze the effects of proposed actions and alternatives on the human environment. Critical elements of the human environment identified in NEPA would be addressed in all environmental assessments or environmental impact statements. If a critical element is not affected, a negative effect statement would be included in the NEPA document. Critical elements include air quality, areas of environmental concern, cultural resources, farm lands both prime and unique, floodplains, Native American religious concerns, threatened or endangered species, hazardous or solid wastes, drinking and groundwater quality, wetland or riparian zones, wild and scenic rivers, and wilderness. If there is no effect on an element not on the critical element list, such as social, economic, and cultural considerations, then the NEPA document would generally be silent on that particular issue.

Changes in grazing use, either a suspension or an increase of permitted use, would continue to be authorized within the existing regulations. The level of change would be established through a grazing decision or a documented agreement with the permittee or lessee. The timeframe for implementing a change in grazing use would be determined on a case-by-case

basis, and the BLM would use the grazing decision or agreement to establish the timeline for the change.

Title to new, permanent rangeland improvements developed under Cooperative Range Improvement Agreements (CRIAs) would be maintained solely in the name of the United States. Range improvements developed before 1995 that are jointly titled between permittees or lessees and the United States would continue to be jointly titled. The number of rangeland improvements being developed on an annual basis has decreased by 25% since 1995, when regulations were changed to require that title to cooperative range improvements would be solely in the United States, rather than shared with a cooperator. The decrease in the number of range improvements is attributable to a number of factors, including decreasing availability of public funds and shifting BLM work priorities. The 1995 change in the CRIA title provisions may also have been a factor in the decrease. It is projected that there would be approximately 1,200 new rangeland improvement projects developed each year over the next 5 years.

The present regulations do not contain language specifically requiring cooperation with State, County, or locally established grazing boards. However, the regulations do include a general requirement that the BLM cooperate with State, County, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds. Many BLM field offices would continue to cooperate and coordinate with locally established grazing boards based on this general provision; however, the level of cooperation would be variable, depending on the individual field office.

Biological assessments are prepared to determine if formal consultation or conference with the U.S. Fish and Wildlife Service or National Marine Fisheries Service (Section 7 of ESA) is required. The process for providing the affected permittee or lessee, States, and the interested public an opportunity to review biological assessments and biological evaluations would not be clarified in the no-action alternative. This lack of clarification would result in continued inconsistencies across the BLM in the extent of review opportunities provided to affected permittees or lessees, States, or interested publics on biological assessments or biological evaluations.

Permittees or lessees could apply for and the BLM could approve temporary nonuse for as long as 3 consecutive years. After the 3-year period has elapsed, the permittee would be required to make full use of the grazing permit or lease. If the BLM determines that additional nonuse would benefit achieving resource objectives, then the authorized officer would issue a grazing decision or enter into an agreement with the permittee or lessee to suspend the permitted use in whole or part. However, this presents a possible deterrence from a permittee's or lessee's standpoint for requesting nonuse and detracts from cooperative management. In addition, the grazing decision or agreement process would create additional workload on the grazing administration and a delayed timeframe for addressing needed changes to grazing management.

The assessment and evaluation of standards of rangeland health would continue in accordance with the present regulations. A determination of achievement (or nonachievement) and identifying significant causal factors for nonachievement would continue to be based on available inventory, monitoring, or assessment data and information. Determinations would continue to be made using assessment information where monitoring data are not available. The credibility of determinations made solely on the basis of assessment information would continue to be challenged through administrative or judicial processes on some allotments and watersheds.

When existing grazing management is determined to be a significant factor in failing to achieve a rangeland health standard, the timeframe for taking appropriate action to ensure the allotment is progressing toward meeting the standard is no later than the start of the next

grazing year. This timeframe can create severe limits on effective communication, cooperation, and consultation with Federal, State, and local governments; Tribes, permittees, and interested publics; for conducting ESA consultation; and developing appropriate alternatives for NEPA analysis. Because of this, decisions to change grazing use to achieve standards of rangeland health are often subject to appeals and litigation. These challenges create significant costs to BLM, causing diversion of resources from other high-priority tasks.

In accordance with the 10th Circuit Court ruling, conservation use would not be authorized. Language in the existing rule is inconsistent with this ruling.

Grazing preference would continue to refer to the superior or priority position against others for the purpose of receiving a grazing permit or lease and would not include the total number of animal unit months (AUMs) on public land apportioned and attached to the base property. Permitted use would remain defined as the forage (AUMs) allocated under the guidance of a land use plan, with active use continuing to be the present authorized use. These definitions have and continue to cause confusion and inconsistent use of terminology.

The interested publics would be required to inform the authorized officer in writing that they wish to be involved in the decision-making process for management of livestock grazing on an allotment. When an interested public has completed the notification process, the BLM would include that entity on the mailing list of interested publics. This inclusion would be for an indefinite period of time and the entity would be maintained on the mailing list and provided with documents and invitations to participate until he or she requested that his or her name be removed. This could result in additional administrative costs for maintaining the mailing list and for sending out mailings, regardless of the involvement by the interested publics in the consultation process.

The BLM would notify all interested publics on the mailing list of any proposed actions that require consultation, cooperation, and coordination. The interested public may decline to be involved in developing a plan for an action or activity requiring a decision. After a decision is issued, the party still has standing to appeal the decision, even though they declined to be involved in the development of the proposed action. The lack of involvement early in the process would increase the administrative costs of providing materials when it is not desired, and of responding to appeals by those who decline to be involved in development processes.

The BLM would continue to consult, cooperate, and coordinate or seek review from the interested publics on actions that relate to day-to-day business activities such as designating and adjusting allotment boundaries; increasing active use; implementing reductions in permitted active use; emergency closures or modifications to grazing use; reissuing grazing permits or leases; modifying permits or leases; and issuing temporary, nonrenewable grazing permits or leases. This requirement could affect the BLM's ability to make timely decisions, such as reduction of use or emergency closure decisions for protection of resources.

The BLM would continue to consult, cooperate, and coordinate or seek review from the interested publics on actions that relate to activities that are not within the day-to-day operations of the BLM. These actions would include apportioning additional forage, developing or modifying grazing activity plans, planning the range development or improvement program, and reviewing grazing evaluation reports.

To the extent allowed by the law of the State in which public land is located, water rights acquired for the purpose of livestock watering on public land would be acquired and maintained in the name of the United States. Where the United States acquires the water right under these circumstances, access to water in an allotment used by a number of permittees, or where there is a new permittee resulting from a transfer of preference, the BLM would manage them rather than having them controlled by a third party.

The present definition of "satisfactory performance" would remain in the negative form, referring to "what is not satisfactory performance" rather than "what is satisfactory performance." Retaining the negative statement form would have a minimal effect on grazing administration.

Changes in permitted use could be authorized by the BLM as long as the changes are maintained within the terms and conditions of the permit. The regulations contain no text regarding what is meant for "within the terms and conditions of the permit." Therefore, the approval of the applications would be subject to definition by the authorized officer. This would create the potential for inconsistent application within the grazing administration program.

The present regulation provides that the BLM may calculate service charges reflecting processing costs, and may adjust the charges as costs change. The BLM presently assesses a \$10 service charge for crossing permits, transfers of preference, and replacement or supplemental billings that are not initiated by the authorized officer. The BLM would not recover processing costs based on the existing service charge. It is projected that the service charge would remain indefinitely at \$10 under the no action alternative.

All three sets of prohibited acts would be maintained within the grazing regulations. The first and second set of prohibited acts would be utilized by the BLM in the administration of grazing allotments. The third set, regarding prohibited acts related to violations of Federal or State laws or regulations, would also be maintained, but based the historical trend, this set would infrequently be used for administration of grazing permits.

The appeal process would continue as outlined within the present regulations. A proposed grazing decision would be issued, and in the absence of a protest or comments, the proposed grazing decision would become the final grazing decision. If an appeal is filed on a decision to modify or renew a grazing permit or lease, and a stay is requested and granted, then the grazing activity would continue at the previous year's level of authorized grazing use pending resolution of the appeal. If the permittee or lessee is an applicant who did not have authorized use the previous year, including a grazing preference transferree, then the grazing activity would be authorized according to the final decision. When a decision is issued for immediate protection of public land resources (§4110.3-3(b)), a stay of the decision could result in that protection being delayed pending resolution of the appeal.

If a stay is not requested, or is requested and not granted, then the final decision would be implemented pending resolution of the appeal.

In a 1998 decision, the Interior Board of Land Appeals (IBLA) ruled that the BLM was to treat biological assessments as decisions for the purposes of protest and appeal. This requirement to treat all biological assessments related to grazing actions as grazing decisions would lengthen the consultation process under ESA and would delay making implementation of grazing decisions, including changes in grazing management practices that may be required to achieve rangeland health standards.

4.2.2 Vegetation

The vegetation communities on the public lands would continue to change over the next 20 years. Wildfire, prescribed burning, and precipitation patterns would continue to be major factors influencing vegetation community composition. Vegetation cover would be expected to slowly increase.

Vegetation communities that are dominated by brush and/or invasive species are not expected to improve except where BLM has land treatment and/or weed control programs. Under this alternative substantial rancher participation in land treatment projects would not be expected.

The BLM would continue to evaluate the conditions of the public lands and determine where current livestock grazing practices are hindering achievement of rangeland health standards. Where BLM determines that current grazing practices are a significant cause for not meeting standards, it would take appropriate action by the start of the next grazing season. The short timeframe for developing and implementing appropriate action has, and would continue to result in, analysis and deliberation that on occasion, is insufficient, leading to expedient rather than effective decisions. This could be evident in situations where adequate time was not provided to formulate a comprehensive plan to address the vegetative concerns.

4.2.2.1 Riparian and Wetland Vegetation

Current trends in riparian condition and restoration are discussed in Section 3.5.2. While the apparent trend in riparian condition at the national level is positive, long term trends are not yet clear based on data from 1998 to 2001. Recent success in applying grazing management to achieve riparian improvement objectives have been documented and almost always involves cooperation with the livestock operator. Under current regulations, overall riparian conditions would remain static or improve from current conditions in most locations over the long term. Some regions would show noticeable improvements in riparian conditions, while other regions would show little change. Assuming the trend in riparian conditions observed from 1998 to 2001 is representative, improvement of riparian areas classified as "properly functioning" would continue to occur at a rate of 1.5% annually. If improvements in "functioning at risk- trend upward" were included, the rate of improvement would be 3.5% per year.

Improvements in riparian and aquatic habitat would result from the continuing implementation of rangeland health standards and grazing guidelines. Where changes in management are necessary, they are expected to include combinations of: segregation of riparian pastures from uplands, changes to the season of livestock use, changes in duration of use (or amount of utilization), changes in the overall amounts of use in riparian pastures, and livestock exclusion at some sites.

Current regulations establish a framework within which individual management plans for riparian areas are developed through close coordination with permittees or lessees and interested publics. Frequently, time and energy are diverted into routine administration issues rather than addressing long term management direction.

Management changes prescribed for riparian restoration most often rely on changes in the timing, duration and season of use. Current regulations allow flexibility in the rate of implementation of new management strategies.

The 3 consecutive year limit for nonuse would continue to limit cooperative options with the operator that benefit riparian and aquatic resources. The BLM could continue to address longer periods of rest, by decision or agreement, but temporary nonuse beyond 3 years would not be available.

Current regulations offer the ability to make determinations without monitoring data. While this feature allows flexibility to prioritize monitoring expenditures, it does not set a minimum standard for decision making. While the absence of the requirement can lead to quicker decisions, some would be made without monitoring data. The risk is that the quality of decisions may be affected, and inappropriate or unnecessary management may be applied.

Riparian vegetation would benefit from quick decisions and management responses where the strategies applied are effective. However, current regulations don't always provide a timeframe that allows for adequate coordination, consultation and cooperation to fully

analyze and develop multiple management alternatives, as well as complete required administrative process.

4.2.3 Fire and Fuels

Overall, the present grazing regulations have minimal affects on the ability to reach a more historical fire regime.

The existing grazing regulations provide the necessary tools to allow the resting of pastures from livestock use so that vegetation manipulation treatments can be conducted on the public lands. Provisions are available to negotiate with affected permittees or lessees and to provide the necessary rest following treatment to allow rehabilitation objectives to be met.

The limiting factors for conducting treatments would be tied more closely to funding levels, the ability of the permittee or lessee to be able to withstand the resting of a pasture or allotment from livestock grazing, and legal challenges of vegetation manipulation decisions.

Interested public participation could lead to delays in implementation of treatments. The present grazing regulations would allow the BLM to authorize a displaced permittee or lessee to graze another allotment if there is one open to grazing use that is not being used by another permittee or lessee. However, if allotment is not available then the permittee or lessee would be forced to rent pasture, buy hay or sell part of the herd.

4.2.4 Soils

4.2.4.1 Upland Soils

Short-term environmental consequences of the present management alternative would be minimal except on a local scale. Natural disturbance regimes such as wildfire or high intensity rainfall events would potentially negatively impact local upland watershed conditions by increasing erosion, sedimentation, and runoff. Restoration projects such as prescribed burning and seeding would potentially benefit local conditions by improving watershed cover. Climatic events, such as drought, would have greater short-term effects on upland watershed conditions than present management in the analysis area.

Long-term environmental consequences of present management would be maintenance or a slow improvement of upland soil and watershed condition due to implementation of rangeland health standards and guidelines and restoration efforts. These beneficial impacts would derive from improved vegetation and plant litter that provides watershed cover and decrease soil compaction. This would result in reduced erosion, sedimentation, and runoff; healing of gullies; greater soil water availability for plants; improved soil aeration; improved biological soil crust cover; and greater soil macro- and microorganism activity. The beneficial impacts would be most pronounced in the higher elevation, moister portions of the analysis area. Beneficial impacts would be slowest and most difficult to achieve in the drier portions of the Tropical-Subtropical and Temperate Desert divisions.

The adverse impact of a long-term drought could partially limit the enhancement of upland soil and watershed conditions depending upon the severity of the drought. The increased acreage of rangeland ecosystems dominated by exotic annual grasses and noxious weeds would result in reduction or alteration of important components of the soil biological community on impacted acres which would make restoration more difficult. Long-term erosion, sedimentation, and runoff would also be increased on acreage dominated by exotic

annual grasses because of increased wildfire risk and reduced plant cover during severe drought years. Cheatgrass die-off has occurred on over two hundred thousand acres in Nevada in 2003 leaving these sites exposed to severely accelerated erosion and loss of long-term sustainability. The cause and long-term implications of this die-off are unknown.

4.2.4.2 Riparian Soils

Short- and long-term environmental consequences of the present management alternative would be similar to those of upland soils except that the high moisture content of riparian soils could accelerate responses to improved management practices. Improved riparian area management would help stabilize lotic and lentic riparian areas where the water or sediment supplies are out of balance, promote growth of deep-rooted, riparian vegetation that helps dissipate stream energy, armors streambanks, and filters sediment from the stream. Displacement of desirable, deep-rooted riparian vegetation by invasive, exotic riparian plants would potentially reduce streambank protection and reduce groundwater available for maintenance of healthy riparian conditions on invaded acreage.

4.2.5 Water Resources

In the short term, climatic variation would have more effect on upland watershed conditions than would present management. Cover, runoff, and accelerated erosion would only slightly change, and the upland watershed conditions would not improve in the short term.

In the long term, improved upland watershed condition would result from implementation of rangeland health standards and guidelines. Climate, soils, and livestock management strategies are key considerations in the implementation of management plans to improve upland watershed condition. Though tempered by site and climatic variability, gradual improvement to upland vegetation and ground cover may occur. Improvement in vegetative cover could, over time, improve the precipitation infiltration rates, reducing surface runoff and erosion.

Continued efforts to improve and maintain vegetative cover may move upland drainage networks toward proper functioning condition over an extended period of time. In the short term, the frequency and size of runoff events would not change.

The overall hydrologic function of riparian stream systems would remain static or improve slowly. Soil erosion and sediment discharge caused by streambank trampling in riparian areas would remain static or decrease slightly over the long term. Thus, the beneficial hydrologic function of these riparian areas (floodplain storage and flood peak reduction, water quality maintenance, and groundwater recharge) would remain static or improve slowly.

Water quality will remain highly variable, remaining static or improving slightly, with improvement in vegetative cover on uplands. Nonpoint source pollutants generated by livestock grazing, including sediment yields and other pollutants (bacteria, salinity and nutrients), would slightly decline. Nonpoint source salinity in the Colorado River basin would decline less than in other desert shrub communities, because of the slow vegetative response to management.

4.2.6 Air Quality

Overall, air quality is expected to be within standards as the existing grazing regulations have maintained or improved the vegetative cover on the soils in the West. Air quality on public

lands is directly affected by the protection of soil by vegetation. Where soil is exposed, then there is a possibility for air quality problems as a result of dust caused by wind over exposed soil. The existing regulations require meeting rangeland standards which include protecting watershed function. Watershed function and rangeland health is tied to proper management of livestock grazing which affect the vegetative resources that protect the watershed.

4.2.7 Wildlife

This environmental impact analysis focuses on how the proposed livestock grazing regulatory changes may affect wildlife and the habitat they require on the 160 million acres of public lands grazed by domestic livestock in the western United States. Under Alternative One, the No Action Alternative, risks and benefits to wildlife and wildlife habitat, are not expected to change.

Currently, rangeland standards and guidelines would continue to be applied, phase in of increases or decreases in active use would be optional, rangeland health assessments could be made with or without monitoring data, and applications for nonuse could not be approved beyond three years. Administrative changes such as relocating satisfactory performance requirements to another section of the regulation and revising service charges have little or no effect on wildlife or wildlife habitat. When a violation is related to the grazing use authorized by BLM, the BLM can take additional action against a permittee or lessee after the individual has been convicted by a court of law or otherwise found to be in violation of several different Federal or State laws or regulations. Although this section of the regulation is rarely applicable, this provision may have some positive effect on wildlife by discouraging grazing permittees from violating these laws.

Currently, the time-frame allowed for making changes in grazing use to move toward or meet rangeland health standards may be too short to allow proper coordination to implement sound, sustainable decisions. Therefore, actions that would help improve upland and riparian wildlife habitat are sometimes delayed either by the implementation of unsound decisions or by litigation. However, there are also times that wildlife species may benefit from the discretionary rapid implementation of changes in grazing use that BLM managers can currently implement.

4.2.8 Special Status Species

This environmental impact analysis focuses on how the proposed livestock grazing regulatory changes may affect special status species and the habitat they require on the 160 million acres of public lands grazed by domestic livestock in the western United States. Under Alternative One, the No Action Alternative, risks and benefits to special status species and their habitats are not expected to change and are the same impacts as for wildlife in section 4.2.7.

4.2.9 Wild Horses and Burros

This environmental impact analysis focuses on existing regulations for livestock grazing as they affect wild horse and burro populations and their herd management areas on the 34 million acres grazed by both domestic livestock and wild horses and burros in the western United States. Under the current regulations, there would be little change in the wild horse and burro populations on public lands.

4.2.10 Recreation

Many recreational activities will be enhanced or diminished by the natural condition of the lands on which they are located. Under current management on the majority of public lands, recreational experiences would be maintained or, where land health standards are not yet attained, improved as upland and riparian conditions improve through actions taken to attain rangeland health standards. Effects to public lands under existing management would continue to be greatest in higher and moister areas where grazing use is greatest, and least in the driest areas that improve at slower rates.

As vegetation cover increases, recreation uses including sightseeing, wildlife watching, and enjoyment of naturalness would be maintained or improved. Many dispersed recreational activities would be expected to improve as the vegetation condition in which they are set improves.

Fishing and hunting opportunities and success rates would be expected to improve or diminish as range health improves or diminishes. Many recreational activities, although not directly focused on pursuits such as sightseeing or enjoyment of naturalness, benefit from aesthetic land qualities that form the background for the overall experience. The experience enjoyed by more highly developed recreational activities (such as OHV) may not be affected by rangeland health. Both commercial and non-commercial activities would be similarly affected. Revenues from commercial recreation types that rely on healthy ecosystems could be increased or decreased as range health improves or deteriorates. Revenues from some commercial recreation activities (for example races) would be generally unaffected by rangeland health.

4.2.11 Special Areas

The existing grazing regulations mostly allow for the protection of special area values from inappropriate livestock grazing use. However, in application, delays to the implementation of actions to improve conditions in special areas could occur as a result of the lack of time to insure good sustainable decisions that would result in long term improvement in rangeland health. Requiring changes in livestock grazing use by the start of next grazing season would not allow proper time to coordinate with permittees or lessees and interested publics. As a result the decisions could be less comprehensive and effective. This is deemed a minor impact in most special areas as they are normally in reasonably good rangeland health which is why they are managed as special areas. Therefore, significant livestock grazing issues are not typical in special areas. Other key elements of the existing regulations would not have significant impacts to special areas.

4.2.12 Paleontological and Cultural Resources

The no action alternative would mean continuation under present regulations. Review of a federal undertaking by a cultural resource specialist is required during specific project planning or implementation at the local level, land use planning initiatives at the state or regional level, or for regulation revision at the national level.

Of the present regulations, the timeframe for taking action to meet rangeland health standards could have the potential to effect on-the-ground actions which consequently can affect heritage resources. Under the present regulations a very short timeframe is specified for implementing appropriate action when livestock grazing has been determined to be a significant factor in not achieving standards or conforming to guidelines for grazing

administration. This timeframe may not be sufficient to complete adequate cultural resource surveys and, if necessary, develop mitigation or protection strategies in compliance with legal mandates.

New project developments have been and will continue to be analyzed for affects on heritage resources on a case-by-case basis. Cultural resource surveys precede management actions that could damage cultural resources (BLM Manual 8100, Cultural Resource Management). Historic and prehistoric archaeological sites found during these surveys would be protected in accordance with the National Historic Preservation Act of 1966 (revised) and other laws or executive orders as stated in the Code of Federal Regulations (36 CFR 800).

The present regulations allow grazing permits to be cancelled following a conviction of a violation of a law or regulation related to the "illegal removal or destruction of archaeological or cultural resources". This clause, though it has never been used, could give protection to fragile and nonrenewable resources that may be important to regional and national heritage.

4.2.13 Economic Conditions

Overall, the local and regional economic effects of the No Action alternative would be minor. Effects would come primarily from continuation of some effects that may be currently ongoing, such as:

1. lower management flexibility for permittees and BLM,
2. potential lack of incentive for permittees to participate in range improvements,
3. potential economic effects on permittees due to the time constraints associated with making rangeland health determinations and implementing grazing decisions, and
4. continued lack of cost recovery for BLM for undertaking specific actions.

The following are the primary source of potential ongoing effects, although none of the provisions, either individually or cumulatively, is considered noteworthy:

* The present regulations do not specify a phase-in period for changes in active use. Consequently, changes in use (primarily reductions) greater than 10 percent can be implemented immediately which may have an adverse effect on permittees in that they would have little time to make alternative arrangements. However, there are no restrictions on phasing in changes in use, so grazing decisions can now, at the discretion of the decision maker, be phased in over a period of time.

* Statistics on range improvements and range improvement funding show there was a decline in numbers of projects and total funding by cooperators, starting in 1996, after implementation of the regulations and that over the past few years there has been somewhat of an increase, although this fluctuates annually. However, the statistics also show that there has been an overall decline in the annual number of range improvements since the 1980s. Consequently, it isn't clear how extensive the effect of the 1995 regulations on range improvement ownership has been.

* Maintaining the 3 consecutive year limit on nonuse may pose a hardship for permittees who may otherwise want or need to take nonuse for longer periods of time, either for resource-related or financial reasons. If a longer period of nonuse were to create improved rangeland conditions, then the 3-year limitation may forestall longer term economic benefits that could result from improved conditions.

* BLM would retain flexibility in the methods it could use to make rangeland health

determinations. However, once a determination is made that existing grazing management needs to be modified, BLM is required to take action no later than the start of the next grazing year which has put a strain on the agency's resources and has limited BLM's flexibility in managing workloads. For permittees, this relatively compressed timeframe could adversely affect their operations if potential changes in use are made more quickly than permittees could efficiently alter their operations. However, the requirement to take action prior to the start of the next grazing season could have a beneficial effect on long-term productivity if rangeland resources begin recovery sooner rather than later.

* Service charges do not presently cover the costs incurred by BLM (and, consequently, the public) so there would be a continued lack of cost recovery. Table 4.2.13.1 shows net cost recovery for grazing permit transfers, crossing permits, and supplemental grazing bills. Maintaining the current service charges would be beneficial for permittees.

4.2.14 Social Conditions

Under the present management, ranches would continue to face a difficult social climate. Drought, livestock price fluctuations, rising costs, and other factors will continue to make ranching an economic challenge. The number of smaller, or "hobby" operators will remain stable. Outside sources of income will, to a certain extent, buffer them from many of the ranch economic forces, but their numbers are constrained by the limited availability of small allotments. Other operators more dependent on the ranch for family income will be directly subjected to economic and social stress associated with public land ranching. Many feel strongly about passing the ranch on to children, but this is increasingly difficult. The levels of personal and family stress associated with uncertainty stemming directly from public land grazing management will continue to grow, though slowly.

The tenure of ranching will continue to change as well. Ranches change hands for a variety of reasons. Consolidation of commercially viable ranches will continue as the herd size necessary for retaining a family ranch continues to rise. In most areas, this will contribute to a decline in the number of commercial ranches, and operations will grow larger. The other ranch tenure issue concerns the nature of the new owners. Many ranches are being purchased for amenity reasons or subdivision. This trend is frequently related to difficulty in passing on a ranch to children. In other situations it is simply an expression of economic reality. In either situation, potential (though not certain) social effects include the removal of ranchers from local social networks, changes to social integration processes, a diminished role for ranchers in the local power structure and a potential loss of open space to subdivision.

Population change in ranching communities will continue. Much of the change is growth, while some communities are experiencing losses in certain populations and gains in others. An example would be losses to mining jobs where miners move out and retirees move into the community. While the economic importance of ranching overall will continue to decline, it will maintain important social dimensions. Ranchers buy inputs no matter how their industry is fairing. This provides a stable underpinning to some economic sectors such as fuel and groceries. The contribution may be small relative to the nonranching population, but it fluctuates little. This produces a belief on the part of ranchers and some local businesses that ranching provides a certain level of local economic stability. This is frequently cited as a good reason to keep ranchers in business.

A similar relation holds for social organization of communities. Ranchers will continue to have a high profile in their communities. Many community members view ranchers as a social constant in a growing community. As communities become more differentiated, ranchers fill a commonly held social role as reminders of the rural life newcomers and locals seek to retain. Ranchers will continue to receive some of the benefits from community stratification, but those relations will change as population growth brings a different universe

of economic relations to the community. Extra-local ties will continue to grow along with population. Finally, community integration will still rely on long-standing social networks in which ranchers play a prominent role. These networks are competing with a growing set of networks that are tied to larger social contexts outside of the community.

Recreation will continue to play a large and growing role in public land management from both individuals and organized groups. People remain in and migrate to both urban and rural areas of the West to enjoy the proximity of extensive recreation opportunities. They will retain strong attitudes about public land management for recreation and will continue to be readily involved in the management process as it pertains to grazing and other issues. Urban and rural growth throughout the region will supply more people each year with a wide variety of recreational interests. These interests will often clash among recreation groups. Primary conflicts will continue to revolve around the role of motorized vehicles on public lands, designation of special management areas that foster certain recreational activities and prohibit others, and the management of areas for recreational values instead of livestock. The primary concern of all recreation groups will continue to be access to public lands throughout the year for a wide variety of uses.

Under present management, conservation and environmental groups play a role in public land management that ranges from community-based conservation efforts to litigation. These efforts will continue. Many locally based groups are pursuing cooperative management strategies for grazing areas deemed to be important for their values, in addition to livestock forage. Such efforts continue to require much more time and resources than traditional organizing efforts for such groups. Local communities and ranchers will continue to have mixed opinions about such efforts, even as successful efforts outline how to best approach such situations. In addition, groups that started out as "local" are expanding and opening offices in other areas and States. This growth will increase the "watch-dog" orientation of these groups. Most such groups include educated participants who are generally opposed to public land grazing and will continue to provide a sharp challenge to management decisions concerning grazing.

4.2.15 Environmental Justice

Environmental justice is defined as the "fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, State, local, and tribal programs and policies" (IM 2002-164).

Describing the baseline situation from an environmental justice perspective involves demarcating the potentially affected area and identifying the low-income, minority, and tribal populations within that area. In a programmatic EIS of national scope, this is not feasible.

In the context of regulations governing grazing on public lands, environmental justice implications--if any--are likely to be driven by social and economic effects. For the no action alternative, the analyses of social and economic effects described here do not suggest any basis for identifying disproportionate effects on low-income, minority, or tribal populations.

4.3 ALTERNATIVE TWO: PROPOSED ACTION

The direct and indirect effects on the human environment of implementing the proposed regulatory amendments as described in Chapter 2.2 are presented in this section.

4.3.1 Grazing Administration

The Proposed Action Alternative would assist BLM in accomplishing its shared stewardship purpose in a manner that works well in the social and economic environment of affected communities. The proposed amendments to the grazing regulations would establish practical ways for permittees, lessees, affected state and local officials, tribes and the interested public to engage with BLM as partners to improve open space, watersheds, and habitat conditions for the next generation. The regulation amendments would improve cooperation with directly affected permittees and landowners; promote practical mechanisms for assessing change in rangelands and protecting rangelands by increasing monitoring activities; and enhance administrative efficiency and effectiveness, including addressing legal issues that need clarification.

Social, Economic, and Cultural Considerations in the Decision-Making Process: This regulatory change would result in greater consistency in the analysis of impacts to the social, economic and cultural elements considered in a NEPA document. Documenting consideration of impacts of proposed changes to grazing preference on relevant social, economic and cultural factors would make decisions or agreements resulting from NEPA analysis more sustainable. Clearly documenting consideration of these factors in addition to those required critical elements in NEPA would increase communication and cooperation with permittees or lessees. This would result in a higher likelihood of permittees or lessees participating in grazing management planning and implementation of decisions or agreements. Additionally, it can be anticipated that decisions or agreements that implement changes in grazing preference would be more comprehensive thus more likely to be realistic, practical, and achievable.

Implementation of Changes in Grazing Use: A change in active use, either an increase or a decrease, would be accomplished through the grazing decision process or a documented agreement with the permittee or lessee. If the change is greater than 10% of the total active use, implementing the change would occur over a five year period. Typically, adjustments would be implemented during the first, third and fifth years. During this time, additional monitoring and assessments could be conducted to determine if changes in active use are resulting in a movement towards achieving rangeland standards or land use plan objectives. This phase-in period allows the permittee or lessee greater opportunity to make economic and management adjustments to his operation in order to lessen any adverse impacts. This often results in improved cooperative relations and management between BLM and the permittee or lessee.

The 5-year timeframe would not be followed in cases where the permittee or lessee agrees to a shorter timeframe, or a shorter timeframe is required in order to comply with applicable law (i.e. Endangered Species Act). If a change in active use of greater than 10% is determined to be required, but it is also determined that soil, vegetation or other resources require immediate protection, or continued grazing use poses an imminent likelihood of significant resource damage, then the change, including total or partial closure from grazing, could occur with the issuance of a final decision which could be implemented immediately (subpart 4110.3-3(b)).

A five year phase-in of changes to active use and the requirement of monitoring data to assess changes in resource conditions would result in an additional workload and costs to the BLM. To accommodate the shift in workload associated with required monitoring, BLM would need to find alternative means of collecting monitoring data, and would reprioritize other tasks.

Range Improvement Ownership: Cooperative Agreements for new, permanent structural range improvements would reflect a shared title between the United States and the cooperator(s) in proportion to their financial or labor contribution toward the project's development and construction. Title to existing range improvements that are held solely in the name of the United States or cooperator(s) would continue to be held solely in the name of the United States. Allowing the cooperator(s) to hold title to structural range improvements in which they have an investment may stimulate an increase in private investments for the construction of range improvements.

Cooperation with State, Local, and County Established Grazing Boards: Adding the requirement to cooperate with State, local, or county established grazing boards in reviewing range improvements and allotment management plans would ensure a consistent community-based decision making process throughout the BLM. Field level range improvement and allotment planning programs would also benefit from the additional perspective that locally established grazing advisory boards could provide.

Review of Biological Assessments and Evaluations: The proposed rule identifies biological assessments as reports that the BLM is required to provide for review to the affected permittees or lessees, states having lands or responsibility for managing resources within the affected area, and the interested public. Providing this review opportunity during preparation would improve communication and understanding of resource and management issues and the rationale supporting grazing management decisions. It would also shorten the time needed for fully processing grazing permits when Section 7 consultation is required.

Temporary Nonuse: The current regulations limit the BLM's ability to extend temporary nonuse for more than 3 consecutive years. The proposed action eliminates the 3 year limitation. The BLM would be able to annually approve temporary nonuse for conservation and protection of rangeland resources beyond the current 3 consecutive year limit. There would be no limit on the number of consecutive years that nonuse could be approved. This is the simplest way to achieve temporary reduced use to respond to rangeland condition needs. In some cases, approval of an application for temporary nonuse precludes the need for BLM to issue a decision to temporarily suspend use. Temporary nonuse can also be approved for the personal and business needs of the permittee or lessee which would allow them to better manage their business, such as livestock sales that result in temporary herd size reductions. There is no additional administrative workload associated with this proposed rule. The rule allows cooperation between the BLM and permittee without requiring a separate administrative process to provide more than 3 consecutive years of temporary nonuse.

Basis for Rangeland Health Determinations: The evaluation of Standards of Rangeland Health and resulting determination would be required to be based on assessment and monitoring. Although this is often done where existing monitoring data is available, this requirement would provide for a consistent approach to making determinations of rangeland health. Acquiring and communicating the monitoring data and supporting rationale used to make a change in grazing management would result in improved cooperation and sustainable agreements or decisions. This new requirement for using monitoring data in addition to assessment information to make determinations on all allotments or watersheds would increase the workload within the grazing program. This workload increase would necessitate reprioritizing work or finding alternative means to collect monitoring data. It may impede the schedule states have established for completing watershed assessments. In addition, the monitoring requirement may delay the permit renewal process on areas where current monitoring data is not readily available.

Timeframe for Taking Action to Meet Rangeland Health Standards: The proposed rule recognizes the need for adequate time to formulate, propose, and analyze actions in an environment of consultation, cooperation and coordination. Providing up to 24 months

to develop a proposal, complete any required ESA Section 7 consultation, complete the NEPA process, including preparation of a rational analysis of alternatives, would result in better, more acceptable, comprehensive and sustainable decisions. This would have a long-term beneficial impact on the land.

Conservation Use: In accordance with 10th Circuit Court ruling, conservation use would be deleted from the regulations. Because BLM would not be issuing conservation use permits under any alternative, the deletion of these provisions would have no impact on BLM's grazing administration program.

Definitions of Preference, Permitted Use and Active Use: The new definition of grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position for the purpose of receiving a grazing permit and lease. Grazing preference includes livestock forage allocation on public lands and priority for receipt of that allocation, as determined through ownership or control of base property. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges. This has been the basis for BLM's system of tracking who has priority for receipt of public land grazing privileges since the enactment of the Taylor Grazing Act. This proposed change would ensure that the term "preference" is used consistently.

Definition and Role of the Interested Public: The interested public would continue to be required to inform the authorized officer that they wish to be involved with an allotment or make comments on an allotment in order to participate in the decision making process. However, if a member of the interested public is not responsive or declines to participate in consultation, cooperation and coordination opportunities, then they would be dropped from the list of interested publics and would no longer be notified of such opportunities. This would result in some minor administrative cost savings associated with maintaining the interested public mail list and in mailing costs.

The specific actions requiring consultation, cooperation, and coordination or review and input from the interested public would be: (1) Apportioning additional forage; (2) Developing or modifying grazing activity plans (i.e., allotment management plans); (3) Planning range development or improvement programs; and (4) Reviewing/providing input on grazing evaluation reports, including biological assessments and biological evaluations.

Day to day management activities that would no longer require the consultation, cooperation, and coordination with interested publics would be: (1) Designating and adjusting allotment boundaries; (2) Reducing permitted use; (3) Issuing emergency closures or modifications; (4) Renewing/issuing grazing permit or lease; (5) Modifying a permit/lease; and (6) Issuing temporary non-renewable grazing permits. The proposed change does not prohibit BLM from including the interested public in these activities.

The clarity of the definition of the interested public and the reduction of actions that would require interested public involvement would enable the BLM to focus communication efforts on those interested publics who are involved in the significant issues occurring on grazing allotments. This increased focus should increase the efficiency of grazing management through the reduction of communication to individuals, groups, or organizations that are not providing input leading up to the decision making process on an allotment. The proposed action still maintains that proposed and final decisions are sent to the interested public. This change would require consultation with the interested public where such input would be of the greatest value, such as determining vegetation management objectives in an allotment management plan, or preparing reports evaluating range condition. This flexibility would allow BLM to take responsive, timely, and efficient management action without being required to first undertake mandatory consultation. All proposed and final grazing decisions

and associated NEPA documents, such as environmental assessments, would still be available to the public under the proposed action.

Water Rights: This rule would remove the requirement that livestock water rights be acquired, perfected, maintained and administered in the name of the United States. This proposed amendment would provide BLM greater flexibility in negotiating arrangements, within the scope of state processes, for consideration of watering facilities in states where the United States is allowed to hold a livestock water right. In those states, BLM would continue to have the option of acquiring the water right as long as we do so in compliance with state water law.

Satisfactory Performance of Permittee or Lessee: Under the proposed regulations BLM would limit the number of possible infractions that it would take into account for determining whether an applicant for a new permit has a satisfactory record of performance. Primarily, the proposed rule changes the definition of "satisfactory performance" from a negative (what is not satisfactory performance) to a positive (what is satisfactory performance). Also, the provision is moved from the mandatory Qualifications section to the Applications section. Implementing this rule change would have minimal impact on grazing administration.

Changes in Grazing Use Within the Terms and Conditions of the Permit: The proposed action would provide additional detail on what is meant by the phrase "within the terms and conditions of the permit or lease." The proposed change to "temporary changes within the terms and conditions of the permit or lease" means changes to the number of livestock for a period of use that BLM may authorize in any one grazing year. This would provide sufficient flexibility to BLM managers and permittees or lessees to address seasonal and annual changes, thereby supporting efficient and responsive management of public lands.

Service Charges: The proposed change in service charges will allow BLM to recover the costs of processing the applications.

Prohibited Acts: In the first set of prohibited acts it is proposed to clarify the provision which prohibits the placement of supplemental feed on public lands without authorization by adding "or contrary to the terms and conditions of the permit or lease". This will clarify the intent of this section to ensure strict compliance with the terms and conditions of the permit or lease.

In the second set of prohibited acts it is proposed to clarify that a violation of any of the prohibited acts in that section must occur on BLM administered lands to be considered a violation. In addition, it is proposed in order to clarify the relationship between the document that authorizes grazing, the permit or lease, and the requirement to pay grazing fees. The intent is to clarify that the grazing permit or lease is the document that authorizes grazing use on public lands not the annual grazing fee bill.

In the third set of prohibited acts it is proposed to clarify and limit BLM's enforcement authority by limiting its application to prohibited acts performed by a permittee or lessee on his allotment where he is authorized to graze under a BLM permit or lease. This change is intended to further ensure that the performance of the prohibited act is related to the permit or lease under which the violator is operating.

Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed: The proposed provision would amend §4160.4 to clarify how the appeal of a BLM grazing decision, and a petition for a stay pending appeal, would affect the decision and continuity of ongoing grazing operations, if any. Grazing would continue even if a stay is granted because the Office of Hearings and Appeals regulations do not establish time frames for resolution of appeals. BLM is attempting to find a balance between the exhaustion of administrative remedies under the Administrative Procedure Act and its responsibilities under the Federal Land Policy and Management Act and Taylor Grazing Act. For instance, when a stay of a

decision concerning a permit or lease renewal or modification or a grazing preference transfer is granted, the applicant would continue to graze under the immediately preceding grazing authorization, subject to qualifications set forth in §4160.4(b). This provision should improve BLM's ability to regulate the occupancy and use of rangelands, safeguard grazing privileges and provide for the orderly use, improvement, and development of the range.

Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process: Biological assessments prepared for purposes of ESA Section 7 consultation identify what actions an agency is considering, so that the U.S Fish and Wildlife Service (FWS) or the NOAA Fisheries can prepare a biological opinion. In addition, consultation with affected permittees or lessees would be required under §4130.3-3(b). The biological assessment is a tool that the FWS and NOAA Fisheries uses to decide whether to initiate formal consultation under section 7 of the ESA. Therefore, it is not a proposed grazing decision that may be protested to BLM or final grazing decision appealable to OHA. If the formal consultation occurs and a biological opinion is issued which requires a change in the terms and conditions of a grazing permit or lease, then BLM will issue a grazing decision subject to protest and appeal. By providing that a biological assessment is not subject to protest and appeal, BLM through consultation with affected grazing permittees and lessees, FWS and NOAA Fisheries would be able to more efficiently and timely make changes in grazing management.

4.3.2 Vegetation

The Proposed Action Alternative is expected to:

1. Improve cooperation with all interested persons
2. Promote practical mechanisms for assessing change in rangelands by increasing monitoring activities
3. Enhance administrative efficiency and effectiveness

This alternative is expected to help BLM achieve vegetation resource management objectives. Improved cooperation with all interested parties is expected to lead to additional resources for public land improvements. Additionally, as BLM's administrative efficiency improves, the rate of achieving vegetation management objectives should accelerate. The speed of achieving vegetation management objective for specific sites would be governed by site-specific climatic conditions, management practices applied, and present state of the site.

Sites that are presently in stable-state vegetative communities are not expected to transition into another state as a result of changing grazing practices alone. Additional practices such as vegetation treatment would be required to achieve noteworthy changes in vegetation composition. These practices are much more likely to occur with the additional resources made available through partnerships.

While the overall long-term effect of the proposed action would accelerate achievement of public land vegetation objectives, there may be short-term adverse effects in allotments where vegetation recovery is delayed by the extended implementation timeframe. The following key elements of Chapter 2 have been specifically assessed:

Social, Economic, and Cultural Considerations in the Decision-Making Process: This alternative is expected to lead to improved cooperation and coordination in making necessary adjustments in grazing management. Cooperative grazing management will result in more rapid achievement of management objectives.

Implementation of Changes in Grazing Use: The proposed changes to the time frame provided for making changes in grazing use are expected to lead to greater mutual

understanding of vegetation goals and mechanisms to achieve these goals.

Where a reduction in grazing use is not urgent, a phased-in reduction over 5-years will not have substantially different effects than a shorter implementation period. Where resource damage is eminent and vegetation resources require immediate protection, the authorized officer may use authority under 43 CFR 4110.3-3(b) to make immediate adjustments in grazing use.

Substantial increases in livestock grazing in recent years have been limited. Where BLM is proposing to increase the grazing levels, the 5-year period would allow for on-the-ground testing of the higher levels prior to full implementation. BLM could monitor the adjustments each year and avoid increasing livestock grazing above the capacity of the public lands.

Range Improvement Ownership: This proposed change should provide increased incentive for cooperator investment in range improvements, improving livestock grazing management designed to achieve land use plan and activity plan objectives.

Cooperation with State, Local, and County Established Grazing Boards: Improved communication and coordination with these boards will stimulate greater support for BLM resource management plans and activity plans. Weed management and control can often be coordinated between BLM and private landowners through these boards, leading to more effective use of resources.

Review of Biological Assessments and Evaluations: This adjustment should improve review and coordination with permittees and interested publics resulting in greater understanding and acceptance.

Temporary Nonuse: The proposed regulation should increase flexibility of both the permittee and the BLM manager to react to such changes as forage availability, climate, economics, and stimulate greater support for short-term adjustments in livestock grazing levels, resulting in greater consistency with forage production levels.

Basis for Rangeland Health Determinations: Requiring monitoring data as a part of the decision process in making Rangeland Health Determinations would result in a more convincing determination and thus may provide an improved foundation for actions where present use of the public lands needs to be adjusted. However, requiring monitoring for all determinations may result in additional monitoring requirements on lands that are considered low priority. For example, lands that are scattered small tracts and are not monitored by BLM will receive additional emphasis for monitoring. Because BLM's staff time is limited, the result will be less management emphasis on high-priority areas. Additionally, it could extend the timeframe for making rangeland health determinations in low priority areas without current monitoring information.

Timeframe for Taking Action to Meet Rangeland Health Standards: Extending the timeline to take appropriate action where present livestock grazing practices are contributing to the public lands not meeting a standard for rangeland health provides additional time to design and implement a more comprehensive plan. Developing a comprehensive vegetative recovery plan has a greater probability of correctly addressing the vegetative concerns with a higher probability of success.

Definition of Grazing, Preference, Permitted Use, and Active Use: These changes in definitions would provide greater consistency and understanding for grazing administration, but would have little effect on vegetation resources.

Definition and Role of the Interested Public: This adjustment should allow BLM to make more timely decisions. Thus, it would have a beneficial effect on vegetation resources.

Water Rights: This change should stimulate greater permittee and lessee support for development of additional water resources on public land. The additional water

developments may assist in meeting BLM vegetation resource management plans and activity plans, providing an overall beneficial effect on vegetation resources.

Changes in Grazing Use Within Terms and Conditions of Permit or Lease: This change provides for consistent application of flexibility to make short-term adjustments in livestock grazing. Grazing will be more consistent with fluctuations in forage production and range readiness, and should have a beneficial effect on vegetation resources.

Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process: This adjustment should speed up the process of consultation, allowing more timely implementation of decisions. Threatened and Endangered plant species would benefit directly from timely decisions and cooperative management.

4.3.2.1 Riparian and Wetland Vegetation

Under the Proposed Action Alternative, trends for riparian and wetland resources would improve with the implementation of some actions under consideration. Present trends in riparian condition and restoration are discussed in Section 3.5.2. While the apparent trend in riparian condition at the national level is positive, long-term trends are not yet clear on the basis of data from 1998 to 2001. Success in applying grazing management to achieve riparian improvement objectives has been documented and almost always involves cooperation with the livestock operator. The effects on riparian conditions that may occur as a result of proposed rule changes are improved cooperation resulting in sustainable management changes.

Under the proposed rule, overall riparian conditions would remain static or improve slightly. Some areas would show noticeable improvements in riparian conditions, while other areas would change little. Assuming the trend in riparian conditions observed from 1998 to 2001 is representative, improvement of riparian areas classified as "properly functioning" would occur at a rate of 1.5% annually. If improvements in "functioning-at-risk with an upward trend" were included, the rate of improvement would be 3.5% per year. The proposed action is expected to promote improvement at higher rates with the range of 1.5 to 3.5% per year, based primarily on the additional emphasis on communication, consultation, and coordination.

Improvements in riparian and aquatic habitat would result from the continuing implementation of rangeland health standards and livestock guidelines. Most changes in management are expected to include combinations of segregation of riparian pastures from uplands, changes to the season of livestock use, changes in duration of use (or amount of utilization), changes in the overall amounts of use in riparian pastures, and livestock exclusion at some sites.

Since individual management plans for riparian areas are developed through close coordination with permittees and interested publics, improvement in communication, consultation, and cooperation would promote more sustainable decisions. The proposed regulations would change the focus of communication, consultation, and cooperation efforts to emphasize those processes where long-term management direction is developed. While opportunities for consultation in these important processes are presently available, public dialogue, time, and energy are now frequently diverted into routine administration issues rather than addressing long-term management direction.

Implementation of changes in Grazing Use: Since management changes prescribed for riparian restoration most often rely on changes in the timing, duration, and season of use, the proposed rule change requiring a 5-year phase-in would not apply to most riparian management plans. Increasing grazing use in a phased-in approach is likely to avoid unanticipated adverse effects by making adjustments on the basis of the observation of effects

on riparian resources. Regardless of the timing of the use and the characteristics of the site, riparian resources would benefit from a progressive, monitored approach to changes in the level of grazing use.

Use of a phased-in approach for large grazing decreases avoids some risk to riparian resources to the extent it maintains cooperation and public support for changes in management. Because sites do not always respond in the short term to changes in grazing, including livestock exclusion or changes in the amount of grazing (Elmore and Betchta 1987; Clary et al. 1996), large changes without phase-in risk loss of user support if expected results are not achieved. In most instances, a cautious and progressively implemented management strategy that produces the intended results creates public support and understanding.

Temporary Nonuse: Eliminating the 3-consecutive-year limit for temporary nonuse would positively benefit riparian and aquatic resources. Removing the limit would increase flexibility and extend the timeframe available for riparian recovery.

Basis for Rangeland Health Determinations: The proposed regulations would require the use of monitoring data in making determinations. Although this feature limits flexibility in prioritizing monitoring, it establishes a minimum standard for decision making. The result may be improved quality and sustainability of grazing decisions. However, the commitment of funding to monitor lower priority areas may divert monitoring efforts from high-priority riparian areas.

Timeframe for Taking Action to Meet Rangeland Health Standards: Riparian vegetation would benefit from carefully considered and designed management responses. The proposed regulations would provide adequate time for coordination, consultation, and cooperation to evaluate and develop reasonable management options, as well as complete required processes. This approach would require careful management in riparian areas that are functioning-at-risk with a downward trend, where improper grazing use combined with a high stream-flow event could cause the system to become nonfunctional.

4.3.3 Fire and Fuels

Fire is a variable, dynamic force with diverse responses and effects. Understanding these processes and interactions is important in determining the role of wildland fire and its effects on the environment. Understanding fire as an ecological process and how it interacts with the environment is critical for developing land management objectives and sustaining rangeland health. The National Fire Plan has resulted in a higher priority being placed on treatment actions and more resources being provided to the fire program to increase treatment acres.

Overall, the proposed action slightly improves the ability to move toward vegetation management objectives because these regulation changes will aid in the reestablishment of fire regimes that more closely resemble that which occurred historically. This is due to the increased time available to coordinate with permittees or lessees during the decision-making process of implementing actions to meet rangeland health standards. Additional time for coordination may result in consensus on vegetation treatment objectives and the actions needed to achieve them.

4.3.4 Soils

4.3.4.1 Upland Soils

The net short- and long-term effect of the proposed action would be to maintain the present condition of the upland soil resource through maintenance of adequate watershed cover. Where the effect on the upland soil resources on an individual allotment has the potential

to be adverse, BLM retains authority under 43 CFR 4110.3-3(b) to curtail grazing.

Implementation of Changes in Grazing Use: Phase-in of changes in active use over a 5-year period would have minimal effects overall but could have an adverse effect on an individual allotment where vegetation conditions fail to provide adequate protection from erosion. However, BLM retains authority under 43 CFR 4110.3-3(b) to curtail grazing to prevent significant resource damage.

Temporary Nonuse: Removal of the limit on consecutive years of nonuse could have a beneficial effect on upland soil resources in allotments where greater natural recovery of watershed cover is desirable. This rule change could also potentially increase BLM's flexibility to rest allotments effected by drought or restoration treatments and thus improve watershed vegetation cover and soil physical characteristics such as compaction. The improvements would be most pronounced in higher elevation, moister portions of the analysis area. Improvements would be slower and most difficult to achieve in the drier portions of the Tropical-Subtropical and Temperate Desert divisions.

Basis for Rangeland Health Determinations: Requiring the use of both standards assessment and monitoring data to determine if existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform to guidelines would have no long-term effect on upland soil resources.

Timeframe for Taking Action to Meet Rangeland Health Standards: Allowing the BLM as long as 24 months to formulate, propose, and analyze the appropriate action for addressing failure to meet rangeland health standards would have little or no adverse short-term effect on the upland soil resources and could have a positive long-term effect if it allows more time for developing a comprehensive plan that would help improve watershed cover. The long-term effect on upland soil resources of this rule change could be positive if it allows more time for developing a comprehensive plan that would help improve watershed cover.

4.3.4.2 Riparian Soils

The proposed rule would have no long-term adverse effect on riparian soil resources.

Implementation of Changes in Grazing Use: Phase-in of changes in active use over a 5-year period would not have any effects on riparian soils because reducing livestock numbers is seldom used as a restorative management tool in riparian area management.

Temporary Nonuse: Removal of the limit on consecutive years of nonuse could have a beneficial effect on riparian soil resources in riparian areas where greater natural recovery of desirable riparian vegetation has occurred. This and other rule changes that enhance desirable riparian vegetation density and vigor would improve riparian stability and increase growth of deep-rooted, riparian vegetation that helps dissipate stream energy, protects streambanks, and filters sediment and pollutants from the stream. This rule change could also potentially increase the Bureau's flexibility to rest allotments effected by drought or restoration treatments, and thus could improve riparian vegetation cover and soil physical characteristics such as compaction.

Basis for Rangeland Health Determinations: Requiring the use of both assessment and monitoring data to determine if existing grazing management practices or levels of grazing use are significant factors in failing to achieve rangeland health standards may have a short-term adverse effect on riparian soil resources but no long-term adverse effects. Riparian soils with poor vegetative cover are at risk of erosion during infrequent flooding. However, the BLM retains authority under 43 CFR 4110.3-3(b) to curtail grazing to prevent significant resource damage.

Timeframe for Taking Action to Meet Rangeland Health Standards: Allowing BLM as long

as 24 months to formulate, propose, and analyze appropriate action for addressing failure to meet rangeland health standards would have no adverse effects on riparian soil resources. The long-term effect on riparian soil resources of that rule change could be positive if it allows more time to develop a comprehensive plan that would help improve protective riparian vegetation density and vigor.

4.3.5 Water Resources

The proposed rule changes would have little or no effect on present water resource conditions. Streams that now meet State water quality standards and are part of properly functioning riparian ecosystems would remain in their present condition. Water bodies that fail to meet State water quality standards and streams that are functioning at risk or in nonfunctional condition will remain static until management changes are implemented, after which slow improvement would occur.

Implementation of Changes in Grazing Use: Many rangeland watersheds throughout the western United States are presently stressed as a result of ongoing drought. Drought conditions pose a barrier to prompt and effective implementation of restorative actions. Extended timeframes for implementation of changes in management may delay short-term watershed recovery but would not affect long-term watershed recovery.

Temporary Nonuse: Granting approval of nonuse for extended periods would have a beneficial effect on watersheds that are stressed by short-term climatic variation or cumulative effects from long-term grazing.

Basis for Rangeland Health Determinations: The proposed action requires additional assessment and monitoring data for evaluating and documenting rangeland health standards for compliance with State water quality requirements and BLM resource management objectives. In allotments with degraded channel morphology (function) and water quality that fails to meet State standards, those resource conditions would remain static until management designed to achieve desired vegetative cover is implemented. Implementation would initiate a gradual recovery process. Extended timeframes for monitoring would delay management; however, this may create opportunity for development of more effective management and accelerated recovery.

Water Rights: The proposed water right policy changes would have no effect on water resources. The proposed rule would increase the flexibility to cooperatively seek and perfect water rights with willing partners, where allowed by State water law.

4.3.6 Air Quality

Overall, the proposed action is expected to potentially improve air quality slightly when compared with the existing situation because of the improvement in vegetative cover as a result of implementation of better and more sustainable decisions in actions to move toward or meet rangeland health standards. The key elements of the proposed action that would have the most positive effect are as follows:

Basis for Rangeland Health Determinations—which requires the use of monitoring data so better and more accurate information is used for making determinations.

Timeframe for Taking Action to Meet Rangeland Health Standards—which extends the timeframe for implementation of the actions and therefore allows for better coordinated efforts.

4.3.7 Wildlife

This environmental impact analysis focuses on policy and regulation changes for livestock grazing as they affect wildlife populations and their habitats on the 160 million acres grazed by domestic livestock in the western United States. Most of the changes proposed under Alternative Two, the proposed action, are expected to have little or no effect on wildlife as the changes largely provide clarification of the existing regulations or bring the regulations into compliance with court orders. Other concerns will be addressed when this EIS is tiered to the local level, as when grazing permits are issued, BLM Offices are required to review the adequacy of existing environmental analyses. The potential concerns for wildlife species from changes in the grazing regulation are outlined below. Ramifications of changes to special status species are discussed in the next section.

Implementation of Changes in Grazing Use: Allowing the adjustment in active use in excess of 10% to be implemented over a 5-year period has the potential to negatively affect plants and wildlife. Changes in active grazing use in excess of 10% are infrequent. Much more common is a change in season of use or location of use. With the cooperation of the permittee or lessee, changes can be made immediately. Further, under 43 CFR 4110.3-3 (b) if the BLM determines that there is an imminent likelihood of significant resource damage, immediate changes can be made.

Temporary Nonuse: This alternative allows BLM to approve nonuse for longer than 3 consecutive years. This requirement may benefit wildlife by allowing a longer time period for habitat to recover from rehabilitation or other effects through application for annual temporary nonuse by the permittee or lessee in cooperation with BLM. However, BLM still reserves the ability to close areas to grazing if conditions warrant.

Timeframe for Taking Action to Meet Rangeland Health Standards: Providing the BLM time - up to 24 months - to develop, formulate and analyze the appropriate action as well as complete consultation requirements and compliance with other laws such as NEPA and ESA has the potential for adversely affecting wildlife in the short term by delaying actions that may benefit wildlife species. As in the earlier discussion of "Implementation of Changes in Grazing Use," such impacts could be reduced if the BLM works cooperatively with the permittee or lessee to efficiently complete all planning and analysis in a timely fashion. cooperates, changes can be implemented immediately. It is anticipated that the extended timeframe would allow for the formulation of better and more sustainable decisions that would result in better resource conditions in the long term. Thus in the long run, wildlife may benefit from this provision.

4.3.8 Special Status Species

This analysis focuses on policy and regulation changes for livestock grazing as they affect special status species and their habitats. As discussed in the wildlife section, most of the changes proposed under Alternative Two, the proposed action, are expected to have little or no effect on special status species as the changes largely provide clarification of the existing regulations or bring the regulations into compliance with court rulings. Concerns about specific species will be addressed when this EIS is stepped down to the local level. When grazing permits are issued, BLM Offices are required to review the adequacy of existing environmental analyses. At this time, if it is determined that federally listed threatened or endangered species may be affected, a Section 7 consultation will be performed. When species become federally listed after the issuance of a grazing permit, additional conservation measure may be added. The potential concerns for special status species from changes under Alternative Two are outlined below.

While it's often best to manage native plant and animal communities or ecosystems, the ESA requires the agency to manage threatened and endangered species by individual species. Species that are considered special status species are those that are officially listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as threatened or endangered; are proposed for listing, or are candidates for listing as threatened or endangered under the provisions of the Endangered Species Act (ESA); listed by a State in a category such as threatened or endangered implying potential endangerment or extinction; and those designated by each BLM western State Director as BLM sensitive. Appendix B provides the most up-to-date list of BLM special status species in each state. While this list is BLM's most up-to-date list of special status species, the list may change at any time according to changes in the listings by the FWS; more current data from recent investigations; and further verification of a species presence on public land.

Implementation of Changes in Grazing Use: The effects on special status species are expected to be similar to the potential adverse wildlife effects previously described. The 5-year phase-in period has the potential to adversely affect numerous at-risk species such as the sage-grouse, pygmy rabbit, mountain plover, and mountain quail if the livestock grazing stocking rate is affecting their decline. However, the need for changing livestock grazing stocking rates is relatively uncommon and changes in active grazing in excess of 10% are very infrequent. Much more common are changes in the time or duration of grazing use, the season of use or location of use - all of which may be implemented without a phase-in period.

There are several ways to avoid impacting special status species. If the BLM manager determines that natural resources require immediate protection because of conditions such as drought, fire, flood or insect infestation or that continued grazing use poses an imminent likelihood of significant damage to natural resources, then the BLM manager is required to close all or a portion of the allotment to livestock grazing or otherwise modify grazing use under 4110.3-3(b). Such decisions may be issued as final decisions effective upon issuance or on the date specified in the decision and are not subject to the phase-in requirement. Another method for avoiding impacts to special status species is for the BLM to work cooperatively with the the permittee or lessee to implement the action immediately without any phase-in period.

The proposed 5-year phase-in period would not apply to species presently listed under the ESA. Once a species is listed, land management processes become more cumbersome and land uses become more restricted.

Table 3.10.2.1 shows the FWS (Western Regions—Regions 1, 2, and 6) Birds of Conservation Concern (BCC) 2002. The BCC 2002 shows the nongame avian species that are likely to become candidates for listing under the ESA. There are 39, 87, and 45 avian species on the BCC 2002 in the Pacific Region, Southwest Region, and Mountain-Prairie Region, respectively.

Temporary Nonuse: This provision, which enables the BLM to approve nonuse for longer than 3 consecutive years, allows BLM more flexibility in allowing habitat to recover. This requirement should benefit special status species by allowing a longer timeframe for habitat to recover from rehabilitation or other impacts. However, the BLM still retains the ability to close areas to grazing if conditions warrant closure.

4.3.9 Wild Horses and Burros

The environmental impact analysis focuses on proposed regulations for livestock grazing as they would affect wild horse and burro populations and their herd management areas on the 34 million acres grazed by both domestic livestock and wild horses and burros in the western

United States.

Overall, the proposed action would slightly improve vegetative conditions over the long-term through better and more sustainable decisions, as a result of having more time to provide effective coordination. Wild horses and burros should benefit from any improvement in rangeland health. However, in the short term, the effect of the proposed action, which allows changes in active use in excess of 10% to be phased in over 5 years, could have minor adverse effects on some herd management areas (HMA). Those HMAs occupied by wild horses and burros where livestock grazing stocking rates need adjustments greater than 10% could experience short-term minor adverse effects. There are no other noteworthy effects from the proposed action to wild horses and burros.

4.3.10 Recreation

Overall, the proposed action would have minimal effects on the recreation program, with highest potential for any effect occurring on such recreational activities as hiking, sightseeing, and enjoying naturalness. The effects could be negative if the implementation of corrective actions to improve rangeland health are delayed. However, the use of monitoring data and having more time to make better decisions would improve the chances for better and more sustainable decisions that could improve rangeland health at a faster rate than under the existing situation.

Many recreational activities would be enhanced or diminished by the natural condition of the lands on which they are located. In areas where rangeland health standards are presently attained, the proposal would not affect recreation opportunities such as hunting, fishing, sightseeing, and enjoyment of naturalness.

As vegetation cover increases, many recreation uses including sightseeing, wildlife watching, and enjoyment of naturalness would be maintained or improved. The least effect on recreation opportunities would occur at highly developed recreation areas where grazing may be restricted and where recreationists tend to be less sensitive to evidence of grazing. Highly developed recreational activities such as OHV would not be affected by rangeland conditions. The greatest effect on recreation opportunities would be on dispersed activities that are more sensitive to rangeland conditions. Effects both positive and negative would be greatest in higher and moister areas where more grazing use occurs, and least in the driest areas that improve at slower rates. Both commercial and noncommercial activities would be similarly affected. Revenues from commercial recreation that rely on healthy ecosystems could remain static or decline somewhat in the short term, but would generally be unaffected by this proposal in the long term.

Under some circumstances, where rangeland health standards are not attained, improvement of conditions could either be delayed or accelerated under the proposed action. Delays may occur as a result of acquisition of additional monitoring data, additional time for the development of management actions, or a 5-year phase-in implementation period. The effect of these delays would vary according to site-specific circumstances and conditions. Accelerated improvement of resource conditions may occur as a result of better decisions from the use of monitoring data and an adequate timeframe for developing management actions that are sustainable. There are no substantial effects to recreation from the other key elements in the proposed action.

4.3.11 Special Areas

Overall assumptions for *all Alternatives*: Special Areas would base determinations and decisions resulting from the proposed actions with full application of the originating proclamations and laws and policies—whichever is appropriate—to determine

implementation suitability. Special Area mandates—including the preservation, protection, conservation, and enhancement of resources, as well as other values and uses—must take priority over subordinate purposes.

Implementation of the proposed action would have minimal effects on special areas in comparison with the existing situation. Special areas are normally in healthy rangeland condition, so they would be expected to be meeting rangeland health standards. Further, they would not normally be in need of livestock reductions. This is because most special areas represent public land acreages that have not had major human effects, which justifies their being special areas. Therefore, the differences between the proposed action and the existing situation would not have measurable effects on these areas in the short term or long term.

4.3.12 Paleontological and Cultural Resources

The majority of the regulation changes, clarifications and additions as stated in the Proposed Action Alternative will have no effect on heritage resources, whether for on-the-ground actions or for the process and requirements of cultural resource management.

Implementation of Changes in Grazing Use: The 5-year phase-in provision could have both beneficial and adverse effects on heritage resources. In the case of decreasing use, heritage resources could be subject to continued effects before the decision is fully implemented; alternatively, in the case of increasing use, the delay could allow extra time to provide protection or data recovery of sites that may be affected by the change.

Basis for Rangeland Health Determinations: Changes to the provision of rangeland health determinations could indirectly affect heritage resources by increasing workload due to site or locality monitoring data requirements, which could delay implementation of grazing related actions.

Any new projects developed under the changed regulations would be analyzed for affects on heritage resources on a case-by-case basis; all applicable laws, executive orders, regulations, and manual requirements and procedures for the identification, protection, and utilization of, and consultation on, heritage resources will be followed.

4.3.13 Economic Conditions

Overall, the local and regional economic effects of the proposed action would be minor. The primary effects would be:

1. increased management flexibility for both permittees and the BLM,
2. increased administrative costs to the BLM,
3. reduced potential adverse economic effects to permittees by increasing the amount of time to make rangeland health determinations and implement grazing decisions,
4. increased service charges to permittees undertaking specific actions, and
5. increased cost recovery to BLM for certain permittee-initiated grazing actions.

The following provisions have the greatest likelihood of creating economic or administrative effects, though none of the provisions, either individually or cumulatively, is considered significant.

Social, Economic, and Cultural Considerations in the Decision-Making Process: The primary effect of this provision would be to increase BLM administrative costs, and perhaps time, to complete NEPA analysis of changes in permitted use. NEPA already requires federal

agencies to consider the effects on the human environment in all of its analyses, including social, economic, and cultural factors. BLM does consider social, economic, and cultural factors in its decision-making but, in some cases, those considerations may not be documented. Where offices are already documenting these considerations, there will likely be no additional workload. However, in some offices, more documentation will increase the workload.

An additional economic effect of this provision may be that, to the extent that social, economic, and cultural factors were not previously documented, decisions on changes in permitted use may change. This could either benefit or harm the permittee, depending on how the decision might change. Likewise, it could benefit or harm other general economic conditions.

Implementation of Changes in Grazing Use: Decreases or increases in active use exceeding 10% of the existing permit would be phased in over a five-year period unless the permittee agrees to a shorter period or there is need to comply with applicable law (e.g., the Endangered Species Act). A 5-year phase-in of decreases in active use would mitigate the potential economic effect on permittees by allowing ranchers additional time to make alternative arrangements or to simply continue livestock grazing activities at existing levels. However, it may also delay needed long-term improvements in rangeland conditions which may in turn delay the achievement of long-term sustainability of range conditions and the permittee's economic viability. Phasing in increases in use would also allow permittees to better plan future use to the extent that additional time may be needed to increase herd size or adjust seasons of use.

Range Improvement Ownership: Shared title of range improvements could potentially improve permittees' financial condition to the extent that title may increase the value of their operations or increase their ability to obtain financing. However, permittees presently do have shared financial interest in range improvements and are compensated for the contribution they made under a cooperative agreement in the event the permit changes ownership, so it is not clear what the net effect of this provision might be. From 1982 to 1995, ownership of range improvements was held jointly by the U.S. government and permittees. Since 1995, the Federal government has held sole title. In some States, there was a noticeable decrease in range improvements from 1995 to 1996, but following 1996 the trends are more erratic. Also, there was an overall declining trend in the numbers of range improvements since 1982 for all States combined. Thus, the data on numbers of range improvements before 1995 and after 1995 do not reveal whether permittees became permanently more reluctant to participate in range improvements, or what the effect may have been on the value of their operations.

Review of Biological Assessments and Evaluations: This provision would primarily create a cost savings to BLM in that BA's would not be considered appealable or protestable actions.

Temporary Nonuse: This provision would increase the number of years permittees could take nonuse. Presently, permittees may only take up to 3 consecutive years of nonuse and this provision would eliminate that three consecutive year limitation. This would be a beneficial economic effect to permittees. Also, it would increase flexibility for both permittees and BLM, since there are a variety of financial and resource condition reasons for taking nonuse beyond 3 years.

Basis for Rangeland Health Determinations: Rangeland health determinations would need to be based on standards assessments and monitoring prior to proposing possible changes in permitted use. This may delay some determinations and increase costs to BLM to address additional monitoring requirements. The effect on permittees would be that initiation of proposals for changes in permitted use would be delayed and thus any potential changes in their operations would be delayed. This may be a beneficial effect to permittees, depending

on whether resource conditions on their allotments can sustain delays in improvement.

Definition of Grazing Preference, Permitted Use, and Active Use: Deleting the term "permitted use" and changing the definition of "grazing preference" to include the total number of AUMs apportioned and attached to base property would have no economic effect. This change reflects essentially a return to the pre-1995 regulations. The 1995 regulations changed the definition of grazing preference to the superior or priority position against others for the purpose of receiving a grazing permit or lease. The priority is attached to base property owned or controlled by the permittee. In addition, the 1995 regulations added the term "permitted use" to mean the forage allocated by, or under the guidance of, an applicable land use plan; it is expressed in AUMs. There was no economic effect from changing the regulations in 1995 and, likewise, there would be no effect from returning to the earlier definitions.

Timeframe for Taking Action to Meet Rangeland Health Standards: The effects would be similar to those from the rangeland health determinations in that BLM would have a longer timeframe, as long as 24 months after determination, to analyze any proposed changes to address resource conditions. This delay could potentially benefit permittees in the same way as the rangeland health determination provision above, assuming that delays in proposed changes to permitted use do not cause continued deterioration in range conditions and thus the economic viability of the permittee's operation.

Definition and Role of the Interested Public: This provision could result in reductions in costs for the BLM, but these cost savings would be minor. There are still requirements for consultation, cooperation, and coordination with permittees or lessees and the State. And the interested public would still be afforded the opportunity for public involvement for various actions including those that affect long term grazing management direction at the allotment level. However, there would be agency actions taken that BLM would not be *required* to consult with the interested public. This provision could have an adverse effect on BLM management because it may be viewed as excluding the public from decisions where public input was previously required.

Changes in Grazing Use Within the Terms and Conditions of the Permit or Lease: This provision could increase management flexibility for both the BLM and permittees but would probably have little economic effect because overall forage utilization could not exceed the amount of active use specified in the permit. For example, if resource conditions indicated forage availability earlier than the authorized turn-out date on the permit, the BLM could authorize temporary changes in grazing use to allow an earlier turn-out date, as long as total use does not exceed the amount of active use authorized by the permit. Without this provision, the BLM would have to issue a temporary, nonrenewable (TNR) authorization to allow use that begins before or ends after the dates specified in the permit. A process that is more time-consuming and costly than simply basing authorization on the existing permit or lease. This provision could not only increase management flexibility, but could lower BLM's costs. It could also result in more efficient utilization of forage because it allows permittees and the BLM to respond to annual fluctuations in timing and amount of forage production. However, in some BLM States, range staff already do authorize temporary changes in use with no problems because the terms and conditions of the permit are flexibly written.

Service Charges: Increasing service charges for certain actions is essentially a cost-recovery measure for the U.S. Treasury. The primary effect of increasing service charges for certain actions would be to transfer some costs from the public (i.e., BLM) to permittees. The present fee is \$10; under the proposed action, fees would increase to:

1. Issuance of crossing permit (\$75)
2. Transfer of grazing preference (\$145)

3. Cancellation and replacement of grazing fee billing (\$50)

Table 4.3.13.1 shows the net cost recovery for each of these three permittee-initiated actions.

4.3.14 Social Conditions

Basis for Rangeland Health Determinations: Proposed action would have minor positive direct social effects on permittees stemming from the required combination of assessment and monitoring for range health determinations. Permittees believe that their relation to the decision process is strengthened when valid monitoring data are available for use. Environmental, conservation, and recreation groups will experience minor positive social effects for similar reasons. Monitoring data are seen by all groups as strengthening the basis for decisions and, therefore, enhancing the resource. Over the long term, the proposed action would have a cumulative positive effect because long-term data would be available to all groups to more accurately assess the condition of the resource and to provide a foundation for range improvements and projects (Table 4.3.14.1).

Changes in Grazing Use Within the Terms and Conditions of the Permit or Lease: Permittees will experience minimal social effects due to the specification of reasons for changes to grazing use. Effects on other groups are also minimal.

Cooperation with State, Local, and County Grazing Boards: Permittees will experience social effects from this proposed action. The specific requirement to coordinate with grazing boards should stimulate the development of additional grazing boards throughout the west. Thus, BLM will increase coordination with ranchers as individual permittees and lessees at the allotment level and additionally as a group at the county level. Because they have other avenues for monitoring and challenging decisions, social effects on environmental, conservation, and recreation groups will be minimal.

Definition and Role of Interested Public: Any social effects from this proposed action are related to the list of actions for which consultation, cooperation and coordination are required. Public involvement does not change for those actions related to planning but is reduced regarding operational decisions. The manner in which a public gains standing is clarified. In sum, these changes should have minimal social effects on all groups.

Grazing Preference: The proposed action will have minimal positive social effects on permittees because it reinforces their belief that permits should be used for livestock grazing. The definition of preference and active use are consistent with their belief that maintaining ranching as the primary use of allotments enhances the stability of their communities and social networks. This change will have minimal effect on the other groups in question.

Implementation of Changes in Use: The proposed action would have positive direct social effects on permittees. The 5-year timeframe provides flexibility and reduces the immediacy of social and economic stress on ranchers and their families in the event of a cut in active use. Environmental and conservation groups generally oppose this idea, instead preferring immediate implementation to prevent further resource degradation. However, these groups could see no direct social effects stemming from this change. It will also have minimal effect on recreation groups.

Range Improvement Ownership: The proposed action would have minimal social effects on permittees because it basically restores the rule to its pre-1995 form. They are familiar with this approach though most expect only a marginal increase in improvements because of being offered title. Social effects on recreational users will be minimal. Effects on conservation and environmental groups are also minimal, being confined mostly to the feeling that permittees holding title to anything on public land is unwarranted. Minimal effects on any group are expected from this proposed action concerning nonstructural improvements.

Review of Biological Assessments and Evaluations: The proposed action clarifies the opportunities afforded to all groups to comment and give input into biological assessments specifically. These opportunities existed generally under the no action alternative and the proposed action simply specifies that these apply to biological assessments. Thus, no social effects on any group are expected.

Satisfactory Performance: This proposed change could have minimal social effects on permittees and conservation and environmental groups by setting out what satisfactory performance actually is, as opposed to what it is not. For the purposes of their involvement in the management of allotments, this provides benchmarks and implies data needs, but is unlikely to require a demonstrable change in how either group interacts with the BLM.

Social, Economic, and Cultural Considerations: Social effects of the proposed action will be minimal for all groups. Any social effects would be related directly to how the information is used or how such considerations are weighed in making decisions. The generation and documentation of information will not itself produce social effects.

Temporary Nonuse: This action will have direct social effects on most permittees. Permittees and lessees feel that a limit on the number of years for which nonuse can be taken is important for maintaining the economic and social viability of their communities. This provision allows permittees and lessees not interested in grazing to apply each year to keep livestock off of the allotments. Permittees see this as being the practical equivalent of a conservation use of these allotments that may produce a cumulative effect over time that reduces their relative social networks within the community and, to them, threatens community stability. These negative effects could be substantially reduced if forage available during nonuse is apportioned. This would meet objections concerning maintenance of the local livestock herd to maintain economic stability. Minimal effects are expected on recreation groups. Minimal positive social effects are expected on conservation and environmental groups. These stem mostly from their belief that the open-ended nature of the proposed action allows for nonuse to continue as long as necessary to recover good resource conditions. This allows them greater opportunity to work with ranch owners to change management practices on allotments within timeframes they think are more ecologically effective. This would allow them to reallocate organizational resources accordingly. The proposed reasons for approving temporary nonuse will have no social effects on permittees, recreation groups or conservation and environmental groups.

Timeframe for Meeting Rangeland Health Standards: Minor positive direct effects will accrue to permittees from this proposed action. They view this proposal as decompressing the decision process surrounding rangeland health standards thereby allowing for better decisions and allowing permittees to plan for potential changes in ranch management. No effects are expected for recreation groups. Social effects for conservation and environmental groups will be minor and negative. Under this proposed action, these groups could encourage and achieve an agency determination about rangeland health but action could be precluded for a 24-month period pending consultations or other action. Direct effects are primarily a perceived degradation in their public access to the BLM decision process, and psychological effects within the organization in that this proposed action engenders a feeling that the decision process is designed to preclude their involvement to a great degree while their concerns about degradation of the resource are minimized.

Water Rights: Permittees will experience positive direct and cumulative social effects stemming from the proposed action reinforcing their belief that water belongs in private hands. They see the management of water resources for livestock as stabilizing their communities. The proposed action could also increase their certainty of stock water resources in the future. This amounts to a potential increase in their rights to stock water over time. Conservation and environmental groups see this proposed action as returning water

rights to those who do not use them to support the ecosystem and therefore local communities. These groups believe that the public holds certain rights to water on public land. The proposed action is seen as precluding uses of water on behalf of the public that are not essentially stock water. They view this as a reduction in their rights to this resource and expect direct and cumulative negative social effects over time. Recreation groups will see few social effects from this proposed action.

4.3.15 Environmental Justice

The regulatory changes proposed here must be considered for their potential effect on low-income, minority, and tribal populations. Executive Order 12898 requires that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

Although there is no standard method for assessing such effects, any environmental justice review should, to the extent feasible, involve the following steps:

1. Determine the boundaries of the potentially affected area.
2. Identify low-income, minority, and tribal populations within the area to be subjected to the proposed action.
3. Identify potentially significant, adverse health and environmental effects that may affect one or more of these populations.
4. Consider "the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action" (CEQ 1997:9).
5. Determine whether such an adverse effect "appreciably exceeds or is likely to appreciably exceed those on the general population or other appropriate comparison group." (CEQ 1997:27).
6. Determine whether adversely affected low-income, minority, or tribal populations have been subjected to "cumulative or multiple adverse exposures from environmental hazards" (CEQ 1997:27), which should include the results of actions by other parties (BLM 2002).

An environmental justice analysis is most feasible in project-level undertakings, where there is a limited affected area and specific environmental effects to be evaluated. It is more difficult in the large-scale review involved in resource management plans, and particularly problematic in regulatory changes having nationwide application, as in the proposed changes to the BLM's grazing regulations.

Approximately 160 million acres of BLM-administered land in the West are suitable for grazing. At this geographic scale, it is not feasible to identify specific, potentially affected low-income, minority, or tribal populations and examine their reliance on public lands grazing. Rather, an analysis should determine if there is a systematic differential effect inherent in the proposed actions, and if so, whether this effect falls disproportionately on one of these populations.

For example, a change in range health standards that resulted in a broadly applied reduction in permitted AUMs would disproportionately reduce the financial viability of ranching operations having a high dependence on public grazing allotments. If there were a reasonably consistent association between high dependence on public grazing and herds owned by

minority, or tribal ranchers, there might be a conflict with environmental justice principles. (The association between smaller ranches and lower incomes is obvious, and by its nature unlikely to be judged discriminatory.)

The regulations considered here do not involve this type of on-the-ground change in grazing operations. Instead, they concern such matters as the phase-in period for changes in conditions of active use; ownership of rangeland improvements; and the opportunities for public comment in grazing administration decisions.

The economic impact analysis found most of the proposed changes to be either neutral or positive for ranchers with BLM grazing allotments, although for a few measures it was not possible to predict whether the effect would result in a net cost or net benefit.

The social impact analysis found the proposed measures neutral or positive, with the possible exceptions of regulations concerning prohibited acts, temporary nonuse, and water rights. Conservation and environmental groups may experience some negative effects from proposals regarding prohibited acts and water rights, in that these measures are inconsistent with their understanding of conditions fostering the health of streams and rangelands. Permittees may experience some negative effects from the proposed modification of the length of temporary nonuse. None of these predicted effects, however, would seem to fall disproportionately on low-income, minority, or tribal populations.

In summary, the changes proposed to BLM's grazing regulations do not violate environmental justice principles as established by Executive Order 12898 and CEQ and Bureau guidance.

4.4 ALTERNATIVE THREE: MODIFIED ACTION

The direct and indirect effects of implementing the regulatory changes known as Alternative Three—Modified Action, as described in Chapter 2.3, are presented in this section.

4.4.1 Grazing Administration

The Modified Action Alternative effects are similar to the proposed action in that it emphasizes a stewardship through partnership approach to grazing management. It also includes enhancement of administrative efficiency and effectiveness, including addressing legal issues that need clarification. However, it allows the authorized officer to make changes in active use, if greater than 10% over a 5-year period, discretionary; does not prescribe that both assessments **and** monitoring be used as a basis for determinations that identify grazing as a significant factor in failing to achieve rangeland health standards; and makes it a prohibited act to not comply with certified weed seed-free forage, grain, straw, or mulch requirements specified by the Authorized Officer.

Social, Economic, and Cultural Considerations in the Decision-Making Process: The consequences would be the same as the Proposed Action Alternative.

Implementation of Changes in Grazing Use: The effects of this provision would be similar to the proposed action except that the phase-in of changes to active use greater than 10% may not have to be implemented over a 5-year period. The authorized officer may, at his discretion, determine that a shorter or no phase-in period would be warranted. This could provide additional protection to Bureau-listed sensitive species, or other sensitive resource values that may benefit from a shorter phase-in period.

Range Improvement Ownership: The consequences would be the same as the Proposed Action Alternative

Cooperation with State, Local, and County Established Grazing Boards: The consequences would be the same as the Proposed Action Alternative

Review of Biological Assessments and Evaluations: The consequences would be the same as the Proposed Action Alternative

Temporary Nonuse: Grazing permittees and lessees would only be able to be approved for up to five consecutive years of nonuse for conservation and protection of rangeland resources, or for the personal and business needs which would allow them to better manage their business, such as livestock sales that result in temporary herd size. After the five-year period has elapsed, the permittee must make full use of the grazing permit or lease. If BLM determines that additional nonuse would benefit achieving resource objectives then the authorize officer could issue a grazing decision or enter into an agreement with the permittee or lessee to suspend the permitted use in whole or part. However, this presents a possible deterrence from a permittee's or lessee's standpoint for declaring nonuse situations, and detracts from cooperative management. In addition, the grazing decision or agreement process would create additional workload upon the grazing administration and a delayed timeframe to address needed changes to grazing management.

Timeframe for Taking Action to Meet Rangeland Health Standards: The consequences would be the same as the Proposed Action Alternative.

Basis for Rangeland Health Determinations: Allowing the authorized officer discretionary use of monitoring data as a basis for determinations of rangeland health would allow BLM at the local level flexibility to prioritize data and information collection. With limited resources BLM would be able to more efficiently and effectively conduct an overall monitoring and assessment program that places an emphasis on allotments that have high resource values, contain resource conflicts, or are not achieving rangeland health standards. The BLM administers numerous grazing allotments that may have a permit or lease for less than 100 AUMs, are less than 640 acres, and have no known resource conflicts. BLM could focus its energy on using monitoring and assessments to make grazing management changes where they are needed to protect high resource values or show that those values are protected under current management.

Conservation Use: The consequences would be the same as the Proposed Action Alternative.

Definitions of Preference, Permitted Use and Active Use: The consequences would be the same as the Proposed Action Alternative.

Definition and Role of the Interested Public: The consequences would be the same as the Proposed Action Alternative.

Water Rights: The consequences would be the same as the Proposed Action Alternative.

Satisfactory Performance of Permittee or Lessee: The consequences would be the same as the Proposed Action Alternative.

Changes in Grazing Use Within the Terms and Conditions of the Permit: The consequences would be the same as the Proposed Action Alternative.

Service Charges: The consequences would be the same as the Proposed Action Alternative.

Prohibited Acts: This provision is the same as the Proposed Action Alternative except for adding a provision that requires the use of weed seed-free forage, grain, straw, or mulch when required by the authorized officer. This would enable the BLM to enforce weed free requirements. This prevention measure would reduce the establishment and spread of noxious weeds on BLM administered lands.

Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed: The consequences would be the same as the Proposed Action Alternative.

Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process: The consequences would be the same as the Proposed Action Alternative.

4.4.2 Vegetation

The effects of implementing Alternative 3 on vegetative communities on public lands are expected to be very similar to the Proposed Action, Alternative Two, over the long term. Differences between Alternative Three and Alternative Two are analyzed below.

Implementation of Changes in Grazing Use: The alternative of using a 5-year phase-in process for permitted use reductions over 10 percent would be used most of the time where agreement with the livestock operator for a shorter timeframe is not achieved. In the few cases where a more rapid adjustment is needed, a more rapid adjustment could be implemented by the BLM. Thus, this alternative would be similar to Alternative Two.

Temporary Nonuse: The limitation of five consecutive years of nonuse would adversely affect the public land vegetation when an extended drought limits normal forage production longer than five years.

Basis for Rangeland Health Determinations: The use of standards assessments rather than both assessments and monitoring as a basis for rangeland health determinations will provide for quicker determinations especially on low priority lands. This will allow for more staff time to be put in high priority areas where there are vegetation condition concerns.

Prohibited Acts: Inserting "Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer" would result in a slower expansion of exotic invasive species on public lands.

4.4.2.1 Riparian and Wetland Vegetation

Under Alternative Three, impacts to riparian and wetland areas would be the same as under Alternative Two, except for the actions discussed below.

Implementation of changes in Grazing Use: Allowing the flexibility to use a phased approach or not, when changes in grazing use are greater than 10%, would benefit riparian vegetation to the extent it promotes decisions that match needs at local riparian sites. For large increases in the amount of grazing use (greater than 10%), potential exists for short term adverse impacts to riparian vegetation during full increase implementation. The areas where large increases have been considered involve pastures with upland treatments such as seedings conducted years ago. BLM emphasis on riparian resource recovery and function is also likely to affect the implementation decision. Regardless of the timing of the use and the characteristics of the site, riparian resources would benefit when allocations are made in stages because the risk of unanticipated, short-term impacts to riparian vegetation is reduced by the opportunity to evaluate change in increments.

For large decreases in authorized grazing use, the rate of change in grazing pressure would be decreased because only part of the decrease would be in effect starting with the first year. To the extent use levels, rather than timing or duration, rates of riparian recovery may be affected until the full reduction is accomplished. However, the rate and potential for riparian recovery on many streams is much more strongly correlated to timing of use.

In most cases, a carefully implemented and progressive management strategy that produces the intended results creates public support and understanding. Under the modified approach, changes that produce positive riparian condition responses would be implemented more slowly in some cases with phase-in, and more quickly in others (without phase-in). But the increased likelihood of grazing operator agreement and the mitigation benefits provided

by phase-in, would generally improve implementation effectiveness and delivery of the riparian improvement results.

Temporary Nonuse: Extending the consecutive year limit for temporary nonuse to five years would positively benefit riparian and aquatic resources by maintaining the flexibility of managers and operators to implement nonuse. The extension provides two years of additional access to a cooperative option to promote additional rest.

Basis for Rangeland Health Determinations: Using either standards assessment or monitoring as a basis for determining that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would have minimal effect on riparian and wetland vegetation. If either assessments or monitoring show that grazing management practices or levels of grazing use are significant factors in failing to achieve standards or conform with guidelines, then the authorized officer can pursue a change in livestock management. However, the flexibility to direct funding for monitoring would focus monitoring effort based on highest priority needs or issues.

Prohibited Acts: Elimination of several acts prohibited by current and proposed regulations would have both short and long term negative effects for riparian and wetland vegetation in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

Adding a provision on weeds: Adding a provision making the use of non-certified weed seed free forage, grain, straw, or mulch where certified is required a prohibited act will have a positive effect on riparian and wetland vegetation. Reducing the likelihood that weeds will be introduced into riparian areas will benefit native riparian species by minimizing competition from introduced weeds. Invasive exotics such reduce riparian area stability, consume scarce water, alter wildlife habitat and compete with beneficial native plant species.

4.4.3 Fire and Fuels

Alternative three is the same as the analysis for the proposed action in Section 4.3.3.

4.4.4 Soils

4.4.4.1 Upland Soils

The impacts of Alternative Three would be neutral to slightly beneficial for upland soils due to maintenance or slight improvement of watershed cover.

Implementation of Changes in Grazing Use: The discretionary five year phase-in of changes in grazing use could result in more rapid improvement of vegetation, soil cover and watershed condition than the proposed action alternative.

Temporary Nonuse: The five-year limit on non-use for grazing would reduce the positive impacts of that rule change compared to the proposed action alternative. Allotments needing more than five years for natural recovery of watershed cover may not achieve objectives for protection of the upland soil resource.

Basis for Rangeland Health Determination: The option of using either rangeland health assessments and/or monitoring as basis for determination of failure to achieve rangeland health standards would be beneficial to upland soil resources since there would be less potential delay in making that determination. An accelerated implementation of management changes would result in more rapid improvement in resource conditions.

Timeframe for Taking Action to Meet Rangeland Health Standards: The impact would be the same as the proposed action alternative.

Prohibited Acts: The addition of the provision on weed seed free forage, grain, straw or mulch could have a beneficial impact if it reduces the spread of noxious weeds on public lands. Noxious weeds can provide less effective watershed cover than native vegetation. Noxious weeds can also alter soil biological communities, thus decreasing restoration success for native species requiring mycorrhizal fungi and other biological components of the natural soils. Elimination of several acts prohibited by current and proposed regulations would have both short and long term negative effects in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

4.4.4.2 Riparian Soils

The impacts of Alternative Three would be neutral to slightly beneficial for riparian soils due to maintenance or slight improvement of watershed cover.

Implementation of Changes in Grazing Use: The impacts would be the same as the proposed action alternative.

Temporary Nonuse: The five-year limit on non-use for grazing would reduce the positive impacts of that rule change compared to the proposed action alternative. Riparian areas needing more than five years for natural recovery of desirable riparian vegetation may not attain adequate protection of riparian soil resources.

Basis for Rangeland Health Determinations: The option of using either rangeland health assessments and/or monitoring as basis for determinations of failure to achieve rangeland health standards would be beneficial to riparian soil resources since there would be less potential delay in making that determination. An accelerated implementation of management changes would result in more rapid improvement in resource condition.

Timeframe for Taking Action to Meet Rangeland Health Standards: The impacts would be the same as the proposed action alternative.

Prohibited Acts: The addition of the provision on weed seed free forage, grain, straw, or mulch could have a beneficial impact if it reduces the spread of noxious weeds in riparian areas. Noxious weeds can provide less effective riparian soil protection than native vegetation. Noxious weeds can also alter soil biological communities, thus decreasing restoration success for native species requiring mycorrhizal fungi and other biological components of the natural soil. Elimination of several acts prohibited by current and proposed regulations would have both short and long term negative effects in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

4.4.5 Water Resources

The impacts of Alternative Three would be similar to the impacts of the proposed alternative except as noted below.

Implementation of Changes in Grazing Use: Rapid implementation of changes in management may accelerate short-term water resource improvement over the proposed alternative but would not affect long-term watershed recovery rates.

Prohibited Acts: The addition of the provision on weed seed free forage, grain, straw, or mulch could have a beneficial impact if it reduces the spread of noxious weeds. Noxious weeds can provide less effective watershed protection than native vegetation. Elimination of several acts prohibited by current and proposed regulations would have both short and long

term negative effects in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

4.4.6 Air Quality

Impacts from the implementation of Alternative Three would be similar to those described for the proposed action. The minor regulation differences do not create a measurable or describeable difference in effects.

4.4.7 Wildlife

The effects on wildlife species in Alternative Three are similar to those identified for Alternative Two except as described below.

Implementation of Changes in Grazing Use: Making the 5-year phase-in period for any change in active use in excess of 10% discretionary rather than mandatory may result in the BLM being able to make changes on the ground more rapidly to benefit wildlife.

Basis for Rangeland Health Determinations: The ability of BLM to base rangeland health determinations on a rangeland health assessment or monitoring data would be beneficial to wildlife. This change from Alternative Two would enhance BLM's ability to take corrective action at the earliest date within existing funding and staffing capability.

Temporary Nonuse: The proposal to limit BLM's ability to approve applications for nonuse to no more than five consecutive years may negatively impact wildlife. It may take more than 5 consecutive years to improve wildlife habitat to the desired state. However, mechanisms are in place to close areas to livestock grazing for longer than five years if conditions warrant.

Prohibited Acts: The addition of the provision on weed seed free forage, grain, straw, or mulch would have a beneficial effect on wildlife if it reduces the spread of noxious weeds. Removing the capability of BLM to address violations of federal or state laws (regulations pertaining to the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses without authorization, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and illegal removal or destruction of archaeological or cultural resources) that have been prosecuted removes a mechanism for protecting wildlife and special status species. Such acts would still be prosecuted by the appropriate Federal or State agency, however after conviction, the permittee or lessee could not be additionally penalized by having the grazing permit or lease denied, suspended, or cancelled.

4.4.8 Special Status Species

The effects on special status species in Alternative Three are similar to those identified for Alternative Two except for the elements described below. The effects on special status species are also similar to the effects of Alternative Three on wildlife species described in the previous section.

Implementation of Changes in Grazing Use: Making the 5-year phase-in period for any change in active use in excess of 10% discretionary rather than mandatory would provide more flexibility in protecting nonlisted species and result in the BLM being able to make changes on the ground more rapidly to benefit special status species. Special status species would not be at risk from the potentially harmful delays in implementation of necessary conservation measures discussed under Alternative Two.

Temporary Nonuse: The proposal to limit BLM's ability to approve applications for nonuse

to no more than 5 consecutive years may negatively affect special status species. It may take more than 5 consecutive years to improve special status species habitat to the desired state. However, if needed, the area could still be closed to livestock grazing for longer than 5 years if conditions warrant.

Basis for Rangeland Health Determinations: The ability of BLM to base rangeland health determinations on a rangeland health assessment with or without monitoring data would positively affect special status species. This flexibility would enhance BLM's ability to take corrective action at the earliest date within existing funding and staffing capability.

Prohibited Acts: The addition of the provision on weed seed free forage, grain, straw or mulch should have beneficial effects on special status species if it reduces the spread of noxious weeds. The concern for special status species on the proposal to eliminate some prohibited acts is the same as the concern for wildlife. There is no way to ascertain how having the capability to remove a rancher from the land has deterred illegal activities that can adversely affect special status species activities such as poisoning prairie dogs and ground squirrels; killing gray and Mexican wolves, grizzly bear, jaguars, and mountain lions; and others.

4.4.9 Wild Horses and Burros

The effects on wild horses and burros in Alternative Three are identical to those discussed in Alternative Two, with the following exceptions:

Implementation of Changes in Grazing Use: Changes in active use in excess of 10% in less than the 5-year phase in period would be a benefit to the rangeland and the wild horses and burros that use it.

Prohibited Acts: The present regulations allow livestock operators to be cited for certain prohibited acts. Elimination of these prohibited acts would eliminate another deterrent if actions would be taken against a permit or lease. However, there are other regulatory mechanisms in place for enforcement of these acts and the occurrences of permittees or lessees conducting these prohibited acts are rare.

4.4.10 Recreation

Overall, the affects on recreation from implementation of Alternative Three would be similar to the analysis for the Alternative Two. Slight differences are explained below, but are not considered noteworthy.

Prohibited Acts: Certain prohibited acts would be removed from the existing range regulations. Although the prohibited acts proposed for removal are activities that could diminish recreational opportunities, their removal would not be expected to affect recreation since those acts would continue to be prohibited in other regulations and laws.

This alternative would make the use of certified weed-free feed a requirement where established by the authorized officer. The recreational setting and opportunities for enjoyment of naturalness, wildlife observation, hunting, fishing, and access to recreational opportunities could be adversely affected by the introduction or spread of invasive species. This alternative would help protect the recreational setting by providing additional regulatory assistance in reducing the potential for noxious weed introduction. This alternative would be most evident on recreation permits and uses in special recreation areas, which are the most highly regulated and monitored.

4.4.11 Special Areas

Overall assumptions for *all Alternatives*: The BLM would base determinations and decisions resulting from proposed action with full application of the originating proclamations, laws, and policies—whichever is appropriate—to determine implementation suitability. Special area mandates including the preservation, protection, conservation, and enhancement of resources and other values and uses must take priority over subordinate purposes.

Effects from the implementation of Alternative Three would be the same as those described for the proposed action. However, there are some slight differences in effects, as stated below.

Prohibited Acts: The provision includes failing to comply with the use of certified weed seed-free forage, grain, straw, or mulch, when required by the authorized officer. The regulation would provide a deterrent to the general public, including permittees or lessees, for introducing or spreading noxious weeds on public lands. BLM law enforcement rangers would have the authority to cite for the violation. Also, Alternative Three would remove provisions regarding prohibited acts related to violations of Federal or State laws pertaining to poisonous bait or hazardous devices, storage of hazardous materials, altering stream courses, water pollution, illegal take, destruction or harassment of fish or wildlife, and destruction or removal of cultural resources. Removing the above provisions would represent a potential loss of a deterrent for potential violators by eliminating punitive actions against grazing permits or leases.

4.4.12 Paleontological and Cultural Resources

Issues to be considered under Alternative Three, Modification of the Proposed Action, are the same as the proposed action except for slight modifications to four of the elements (Temporary nonuse provision, 5-year phase-in provision, rangeland health determination requirements, and prohibited acts). All of the previous changes or provisions that could have no effect on heritage resources would also have no effect under Alternative Three, including the slight modification in the temporary nonuse provision. Additionally, the provisions in Alternative Two that could affect heritage resources would also have an effect under Alternative Three.

Implementation of Changes in Grazing Use: Having the 5-year phase-in provision be discretionary rather than mandatory may allow added flexibility to the relation between permittee or lessee and the BLM at the local level. Also, this provision could have both beneficial and adverse effects on heritage resources. With decreasing use, heritage resources could be subject to continued effects before the decision is fully implemented; alternatively, with increasing use, the delay could allow extra time to provide protection or data recovery of sites that may be affected by the change.

Basis for Rangeland Health Determinations: Changes to the provision of Rangeland Health Determinations may indirectly affect heritage resources by increasing workload because of site or locality monitoring data requirements.

Prohibited Acts: Changes may have a slight adverse effect on heritage resources. Elimination of the "illegal removal or destruction of archaeological or cultural resources" clause could hinder BLM's ability to take action against the permittee or lessee in the form of withholding issuance, cancellation, or suspension of their permit or lease. However, it does not preclude BLM from taking action against the permittee or lessee for violation of federal law. Overall, this would have a minor effect on BLM's ability to protect and manage cultural resources as required by the National Historic Preservation Act and the Archaeological Resources Protection Act.

4.4.13 Economic Conditions

The economic effects of Alternative Three would more closely resemble those under Alternative Two, Proposed Action, with the exception of three following provisions:

Implementation of Changes in Grazing Use: Under Alternative Three, a 5-year phase-in of changes in use exceeding 10% would be discretionary rather than mandatory. When the 5-year phase-in is used, the effects would be the same as under the Proposed Action. A phase-in period of less than 5 years may require permittees to make management adjustments more quickly than might be preferred by them. However, a shorter phase-in would accelerate improvements in range conditions which, in turn, may have a long-term beneficial effect on permittees' operations.

Temporary Nonuse: Under Alternative Three, temporary nonuse could be annually approved for as long as 5 years. The economic effect of this would be somewhere between Present Management (where 3 consecutive years on nonuse may be approved) and the Proposed Action (where there are no limits on the number of consecutive years of approved nonuse). This provision offers an additional 2 consecutive years of nonuse, which would be a beneficial economic effect on permittees and would increase flexibility for both permittees and the BLM.

Basis for Rangeland Health Determinations: Under Alternative Three, the BLM would have discretion to use assessments or monitoring as a basis for rangeland health determinations. This differs from the Proposed Action, which requires that both assessments and monitoring be used. The provision would give BLM greater flexibility than under the Proposed Action. All States now have some procedures for standards assessments and these may or may not also be accompanied by monitoring data when making determinations. Overall, greater flexibility to concentrate limited resources on priority allotments would effect the administrative costs or workloads on BLM. The economic effect on permittees would primarily be that determinations might not be delayed and thus, proposed changes in use might occur earlier than under the Proposed Action.

4.4.14 Social Conditions

Basis for Rangeland Health Determinations: The proposed action could have minimal social effects on permittees and conservation and environmental groups by allowing the agency to choose to use either assessment or monitoring as a basis for determining range health. Both groups stated that they prefer monitoring to be the basis for important and controversial determinations of rangeland health. Choosing to use an assessment instead could force both groups to use their resources to conduct their own monitoring and to challenge the assessment-based decisions on those grounds. No effects are expected on recreation groups (Table 4.4.14.1).

Temporary Nonuse: Minimal social effects are expected from this proposed action.

Prohibited Acts: These deletions could have negative social effects on conservation and environmental groups who see this as a reduction in prohibited acts that will allow further degradation of grazing allotments. They see direct effects in the threat that some of these actions present to the quality of their local environment. Recreation groups could experience similar effects if previously prohibited acts reduce the quality of their recreation experience. Both groups see these changes as potentially requiring that they acquire and expend additional resources over time to monitor and challenge the deleted activities on grazing allotments and as reducing their formal avenues for applying pressure on range managers to stop such activities. Permittees will experience minimal social effects.

4.4.15 Environmental Justice

The environmental justice implications of the modified action alternative are substantially identical to that identified for the proposed action alternative.

4.5 CUMULATIVE AND OTHER EFFECTS

The Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) for 40 CFR Parts 1500-1508 identify requirements for the Federal agencies to address the cumulative impacts of proposed actions. Cumulative effects are defined as the effects on the environment resulting from the incremental effects of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

The scope of this proposed action and alternatives is very broad. The analysis of effects is therefore programmatic. Other broad-based initiatives and actions that are likely to contribute to cumulative effects are discussed below. In addition to the various programmatic actions, there will likely be regionally and locally based actions that will contribute to the cumulative effects.

As indicated in Chapter 1, the BLM has initiated an effort to develop grazing policies that would promote sustainable rangeland and sustainable ranching. The purpose of this effort, known as the Sustaining Working Landscapes policy initiative, would be to improve the long-term health and productivity of the public lands through innovative partnerships with permittees and lessees within the current regulatory framework. Twenty-four public workshops were held on the policy initiative in spring 2003. In summer and fall 2003, policy options were considered by 21 BLM Resource Advisory Councils throughout the West, and recommendations were submitted to the Director. All of this information is presently being reviewed. It was decided, however, that further action on the Sustaining Working Landscapes policy initiative would be deferred until comments had been received on the Proposed Rulemaking to amend the grazing regulations. It is reasonably foreseeable that policies would be developed and implemented over the next year to promote sustainable ranching and rangelands. However, it is not known at this time what the specifics of those policy proposals would be. It is likely that any policies that may be developed would focus on encouraging partnerships with permittees and lessees and others who may be interested in improving the health and productivity of the rangelands as well as promoting mechanisms to facilitate more efficient ranching operations. The policy emphasis, therefore, will generally complement the objectives of the proposed regulatory amendments.

The Healthy Forests and Rangeland Initiative and the National Fire Plan have also been identified as programmatic level policies that will affect rangelands. Both of these initiatives involve collaborative efforts with all stakeholders to reduce excessive fuels to reduce the potential for devastating wildland fires and to promote healthy forests and rangelands. These efforts focus primarily on forested lands rather than rangelands; however, it is reasonable to assume that over time there would be greater emphasis on rangelands, and rangelands would experience increasing positive benefit from these efforts. The Stewardship Contracting program, which is part of the Healthy Forests and Rangelands Initiative, received several project proposals in woodland areas that focused on reducing fire risk and enhancing rangeland health. In the fire program, there are several projects under way to train and equip ranchers to be qualified to assist in fire suppression and fuels treatment projects. Again, these efforts complement the general objectives of the regulatory amendments, particularly in promoting partnership and cooperation with permittees and lessees in achieving mutually beneficial objectives.

Another initiative under way is the development of a programmatic Vegetation Treatment EIS. The goals of the Vegetation Treatment program are to manage vegetation to sustain the condition of healthy lands and, where land conditions have degraded, to restore vegetation to

more healthy conditions. The vegetation treatment program, which covers a variety of vegetation treatment options and best management practices, will also complement the objectives of this Proposed Rulemaking.

A third critical initiative is the BLM Sage-Grouse Habitat Conservation Strategy. The primary goal of this Strategy is to help address the precipitous population decline of the sage-grouse, a species under consideration for Federal listing under the ESA, through a comprehensive habitat conservation strategy. Today, the BLM manages more than 50% of the remaining sage-grouse habitat. The strategy is a sage-grouse rangewide effort that involves a diverse group of cooperators including multiple Federal, State, and Tribal agencies, as well as special interest groups and private landowners. Appropriate and timely conservation measures for sage-grouse are critical for preventing further population declines and ESA listing of the species. Conserving and improving habitat for native species such as sage-grouse are part of the objectives of improving rangeland health through better use of the Four C's. Therefore, the Sage Grouse Habitat Conservation Strategy is expected to complement the objectives of this Proposed Rulemaking.

Policies and procedures for promoting the Secretary's Four C's—consultation, cooperation, and communication all in the service of conservation—are also being developed. One of the purposes of this rulemaking is to improve working relations with our permittees and lessees, an important component in support of the Four C's philosophy.

In summary, the other related programs being initiated or contemplated at this time will cumulatively enhance and increase the positive outcomes and effects anticipated from this proposed rulemaking.

There are no irreversible or irretrievable commitments of resources directly resulting from the proposed regulation changes nor are there any projected discernable effects from short-term uses on long-term productivity of resources arising from this proposed rulemaking.

Some adverse effects may not be avoided because of increases in timeframes associated with several components of this proposed rulemaking, including the requirement for a 5-year phase-in of changes in use of over 10%, the requirement for monitoring before making a determination on rangeland health, and the extension of time allowed before a decision must be made after a determination that livestock grazing is the causal factor for failure to meet or make progress toward meeting rangeland health standards and conforming to guidelines for grazing administration. However, better and more sustainable decisions would be developed by using monitoring data and taking the time to complete proper consultation, cooperation, and coordination with permittees or lessees and interested public, which may result in positive effects on rangeland health.

Mitigation measures are addressed in the development of Alternative Three. Additional mitigation measures would be appropriately developed when site-specific NEPA documents are prepared to implement the regulatory provisions.

Draft EIS - Chapter 5

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5.1.1 Scoping Process

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to prepare an EIS to the *Federal Register* on March 3, 2003. These notices requested public comments on what BLM is the serious process for both the proposed Rule and associated Draft EIS. The comment period for both ended on May 2, 2003.

In the Notice of Intent to prepare the EIS, the BLM stated that it was considering responses to the present Rule and could issuing a new rule for BLM and regulated users in the administration and management of public land. Comments were requested on specific rule participation that were related to both the EIS and proposed rule. Copies of the ANPR and NOI can be found in Appendix D and Appendix E, respectively, of this EIS.

The BLM held four public scoping meetings during March 2003. Approximately 50 people attended the Billings, Montana, meeting (March 17) and 25 people attended the Butte, Montana, meeting (March 20). Approximately 25 people attended the Reno, Nevada, meeting (March 26) and 25 attended the Washington, D.C., meeting (March 27), with testimony provided by 7 individuals.

5.1.2 Summary of Scoping Comments

The BLM received more than 3,000 comments during scoping in response to the Advance Notice of Proposed Rulemaking and the Notice of Intent. Most of the comments were from Bureau personnel, at least one Bureau agency, including administrative comments from special interest organizations and

5.0 CONSULTATION AND COORDINATION

Chapter 5 contains a summary of the public participation process, the scoping comments, and consultation and coordination with other Federal agencies on this proposed rulemaking. Also incorporated in this section is a list of preparers of this Draft EIS.

5.1 PUBLIC PARTICIPATION

As described in Chapter 1, the EIS public participation process consists of several phases. Public participation begins with scoping, which is conducted to help identify issues and alternatives before the proposed action and alternatives have been developed. Information gathered during scoping is analyzed and used in determining the issues to be addressed and the alternatives to be presented in detail in the Draft EIS.

The Draft EIS is subject to further public review and comment during the 60-day public comment period. Public meetings are held during the comment period on the draft, allowing individuals to present oral comments on the draft. After the comment period, a Final EIS is developed that responds to comments received on the Draft and incorporates, as appropriate, changes in the proposed action, as well as the analysis of effects.

Including public involvement throughout the process ensures that the process is open and considers information from all interested parties, including other Federal agencies, State and local governments, the scientific community, professional organizations, public land users, conservation organizations, and citizens at large.

5.1.1 Scoping Process

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on March 3, 2003. These notices requested public comment to assist BLM in the scoping process for both the proposed Rule and associated Draft EIS. The comment period for both ended on May 2, 2003.

In the Notice of Intent to prepare the EIS, the BLM stated that it was considering changes to the present Rule and establishing new options for BLM and rangeland users in the administration and management of public land. Comments were requested on topics under consideration that were related to both the EIS and proposed rule. Copies of the ANPR and NOI can be found in Appendix D and Appendix E, respectively, of this EIS.

The BLM held four public scoping meetings during March 2003. Approximately 60 people attended the Billings, Montana, meeting (March 18) and 25 people offered testimony. Around 150 people attended the Reno, Nevada, meeting (March 20) and 25 offered testimony. Approximately 50 people attended the Albuquerque, New Mexico, meeting (March 25) with 35 individuals providing testimony, and approximately 30 people attended the Washington, D.C., meeting (March 27), with testimony provided by 5 individuals.

5.1.2 Summary of Scoping Comments

The BLM received more than 8,300 comments during scoping in response to the Advance Notice of Proposed Rulemaking and the Notice of Intent. Most of the comments were form letters; however, at least three dozen letters containing substantive comments from special interest organizations and

State and Federal agencies were received. In addition, many substantive comments were provided orally at the public meetings.

The comments have been categorized into five topics: A) Definition changes. B) Changes in the regulations to clarify present requirements and to allow better rangeland management and permit administration. C) Amendments related to changes in permitted use. D) New provisions to the regulations. E) General comments not addressed in the ANPR and NOI.

A summary of the scoping comments is found in Appendix C. All of the comment letters are posted on the internet at <http://doi1.ios.doi.gov/blm/rc3.nsf>. Oral comments at the public meetings were transcribed and are also found on the internet at http://www.blm.gov/nhp/news/releases/pages/2003/pr030303_grazing.htm.

The following is a brief summary of the public comments by topic. The bold text represents what was stated in the ANPR.

A. We are considering revising or creating definitions of the following terms:

- **Active Use:** Several commenters stated that BLM could have administratively removed the term "conservation use" and a rule change was not necessary.
- **Authorized Use:** Comments were polarized. Some wanted BLM to provide for the maximum amount of flexibility when considering the terms "nonuse" and "reduced use" in our definition of "authorized use." Others stated that this change may be inappropriate or illegal, and would limit BLM's ability to adjust livestock numbers and use for the benefit and protection of other uses or resources of the public lands.
- **Base Property:** Commenters stated that the issues were addressed in the 1995 regulations and questioned why there should be a change.
- **Grazing Lease:** Comments were that the existing definition is taken from the Taylor Grazing Act and should not be changed.
- **Grazing permit:** The BLM addressed this and other definitions during the 1995 Range Reform efforts and so commenters questioned why BLM wanted to change them now.
- **Grazing preference or preference:** Comments were split on this issue. Some commenters were in support of using "preference" because it is the term used in the Taylor Grazing Act. The livestock industry groups suggested that preference should replace the term "permitted use" wherever it appears in the current regulations. The environmental groups generally felt that "permitted use" is properly determined by a land use plan and should remain as an indicator of livestock numbers allowed on a particular allotment.
- **Monitoring:** Few comments were received on the definition. There were many comments on the importance of monitoring, how vital it is, and the use of the

monitoring data in decisions and the management of livestock on the public land.

- **Reserve Common Allotments:** No comments were received pertaining to the definition. See below for comments on the establishment of reserve common allotments.

B. We are considering changing the regulation to clarify present requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- **Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.** The livestock interests supported the changes that BLM was proposing, plus added a few additional revisions, and believed it was consistent with the Taylor Grazing Act. The environmental and law school commenters stated that Section 4130.9 should be deleted because it illegally recognizes the use of permits and leases as collateral. They state that by recognizing grazing permits as legal property interests and treating them as such skews real estate markets and increases the pressure to serve individual interests.
- **Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.** These statements centered on who should qualify to conduct grazing operations on public land and how preference order should be decided. Generally grazing interest comments focused on: (1) ensuring compliance with terms and conditions of permits, (2) requiring that permit holders be in the livestock business, and (3) opposition to nongrazing parties holding or retiring permits. Conservation groups advocated opening up receipt of preference to a wider range of parties.
- **Clarifying the provisions addressing grazing preference transfers.** Comments on this issue were primarily focused on the idea that there should not be any "grazing preference transfer," the transfer should be viewed as a new permit, and all appropriate disclosure and NEPA compliance should be required.
- **Reinstating an earlier provision that BLM and the permit holder may share proportional title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.** There were many highly polarized comments on this subject. Supporters from the livestock industry felt that shared title would improve stewardship, willingness and ability to invest, and provide incentive for better livestock management, whereas opponents raised the issue of takings cases related to private property on public land and that the 1995 regulation clarified that permittees do not have a property interest in Federal permits when they build range improvements on Federal land.
- **Clarifying that BLM will follow State law with respect to the acquisition of water rights.** The three points of view were expressed by commenters: (1) The BLM should hold water rights on public land, (2) BLM should follow State water law, and (3) permittees should hold stock water rights.
- **Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private lands and improve livestock operations.** There was almost universal opposition from all groups to this proposal. The opposition was due to a concern from the general public of a loss of access to public land and a fear from livestock operators of being criticized if they used this proposed method.
- **Clarifying which nonpermit violations BLM may take into account in penalizing a permittee.** Commenters were split. Supporters of removing certain prohibited acts felt

that being cited by BLM for a grazing violation after being convicted by another agency for the same infraction amounted to "double jeopardy." Opponents felt that citing permittees for violations of environmental law is necessary to encourage good stewardship.

- **Considering ways to streamline the grazing decision appeal process.** Most commenters were concerned about the length of the process and streamlining sounded promising, but most were concerned that the proposed rule would reduce public involvement in this process. The grazing interests supported a provision that would call for suspension of a decision when a permittee or lessee files a timely appeal to a BLM decision.
- **Extending the time period that BLM may approve nonuse of forage from 3 to 5 years.** Most grazing interests supported this proposal, but they didn't distinguish between permittee-initiated actions and actions initiated by BLM to address resource problems. Some commenters urged a longer period of nonuse than the initially proposed 5 years for addressing environmental problems, and some were concerned with the possible loss of water rights because of the nonuse beyond 3 years.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

- **Creating provisions that reemphasize consideration of social, economic, and cultural effects in addition to the ecological effects of Federal actions to ensure compliance with the National Environmental Policy Act.** Comments were fairly evenly divided. Supporters from the livestock industry expressed the belief that these factors are consistently ignored, whereas opponents said that NEPA consideration should focus on environmental impacts.
- **Requiring a permittee or lessee to apply to renew a permit or lease.** Several commenters asked BLM to consider automatic renewal for permittees or lessees who follow the terms and conditions of their permits or leases. One commenter asked BLM to consider informing permittees of the renewal process to ensure that they apply for renewal and thus do not lose their permit.
- **What criteria BLM will consider before approving increases in permitted use.** Some commenters said BLM should never allow increases, while others stated that increases or decreases should be based on sound science and monitoring and after other forage and habitat objectives have been met.
- **Considering whether to amend the provisions stating when BLM will implement action that changes grazing management after determining that the allotment used by a permittee or lessee is not meeting or significantly progressing toward meeting land health standards.** Comments received on the topic of rangeland health standards recommended that BLM try stricter adherence to existing standards and establishing timeframes for compliance.

D. We are considering adding the following new provisions to the regulations:

- **Establishing and administering a new concept called "Reserve Common Allotments" (RCAs).** RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary, nonrenewable basis to permittees participating in the restoration on their allotments. Opponents and supporters were evenly divided. The operators that supported this proposal still expressed fear that they would be forced off their allotments to create

RCAs. Opponents believed that RCAs will lead to degraded rangeland and will reward operators who are poor stewards of the land. Generally, commenters were skeptical that this program would be carried out as proposed.

- **Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement or supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.** Comments were on both ends of the spectrum on this issue. Many supported the idea of a fee schedule that takes into account appropriate and reasonable administrative costs. Others felt that ranchers spend more time and money on the allotments and improvements than BLM spends on regulation, so there was no need for a fee schedule.
- **General comments on issues not specifically addressed in the ANPR and NOI.** Many other comments were received; for a summary, see the Appendix C "Comment Summary" for many additional comments.

5.2 CONSULTATION AND COORDINATION ACTIONS

5.2.1 Tribal

A letter has been sent to all tribal chairpersons for federally recognized tribes west of the Mississippi River, initiating consultation in accordance with the National Environmental Policy Act, the National Historic Preservation Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, and Executive Order 13007 to ensure that any concerns they have will be fully considered. The letter included a copy of the Draft EIS for their review, and requests that comments be submitted during the 60-day public comment period.

5.2.2 Threatened and Endangered Species

Conferencing and informal consultation with the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (formerly National Marine Fisheries Service (NMFS)) will be conducted to discuss the preliminary findings that there will be no adverse effects to candidate, proposed, threatened or endangered species and/or designated or proposed critical habitat from the proposed regulation changes. Before grazing permits are issued, the appropriate BLM Office must review the adequacy of existing environmental analyses and consider if candidate, proposed, threatened or endangered species and/or designated or proposed critical within the proposed permit area may be affected. If adverse effects are expected, a formal Section 7 consultation will be performed.

5.2.3 Cultural and Historic

Before authorizing surface disturbance undertakings at the regional or local level, the BLM will identify cultural properties eligible for inclusion in the National Register of Historic Places and consider the effects of the proposed undertakings through the consultation process in Section 106 of the National Historic Preservation Act of 1966.

Section 106 of the National Historic Preservation Act requires Federal Agencies to take into account the effects of their undertakings on historic properties. The agency will send a letter to the Advisory Council on Historic Preservation notifying them of the proposed regulation changes. The letter will provide a brief synopsis of the goals and objectives of the regulations changes and information on where to find the current regulations for their review. Once the

Draft EIS is available, a copy will be sent to them for their review.

Any new projects developed under the changed regulations would be analyzed for effects on heritage resources on a case-by-case basis; all applicable laws, executive orders, regulations, and manual requirements and procedures for identification, protection and utilization of, and consultation on heritage resources will be followed.

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Table 3.4.3.1 Number of Rangeland Improvement Projects By State

Fiscal Year	AZ	CA	CO	ID	MT	NM	NV	OR	UT	WY	Total
1982	120	125	280	290	410	209	243	318	227	177	2399
1983	180	103	245	333	481	242	191	491	428	211	2905
1984	120	128	192	245	437	161	165	202	232	183	2065
1985	112	173	181	213	332	148	159	209	188	390	2105
1986	110	88	180	232	312	148	181	149	198	135	1733
1987	114	119	216	231	284	113	159	159	246	238	1879
1988	168	120	275	164	255	155	121	146	257	161	1822
1989	155	70	189	214	246	228	117	190	243	196	1848
1990	142	34	179	233	300	183	141	138	183	183	1716
1991	66	64	267	192	328	180	163	228	145	204	1837
1992	56	46	282	156	329	249	102	160	133	217	1730
1993	61	47	286	147	323	300	62	214	119	134	1693
1994	69	46	213	133	286	218	125	197	107	154	1548
1995	67	44	242	116	159	278	70	241	102	181	1500
1996	44	34	172	91	118	106	70	204	125	98	1062
1997	25	35	225	91	211	118	76	161	118	141	1201
1998	20	38	183	104	224	92	82	161	102	102	1108
1999	29	44	178	133	165	99	111	217	86	167	1229
2000	58	55	243	112	209	106	122	244	140	169	1458
2001	31	41	130	133	141	50	132	140	40	138	976
2002	83	49	180	145	283	49	52	114	34	161	1150
Total	1830	1503	4538	3708	5833	3432	2644	4283	3453	3740	34964

Table 3.4.5.1 Estimated Authorized Use and Non Use

Fiscal Year	Authorized Use	Nonuse
2002	7,872,819	4,824,362
2001	8,112,008	4,664,361
2000	9,837,588	2,972,899
1999	10,087,988	2,906,895
1998	10,353,032	2,662,271
1997	9,445,482	3,624,694
1996	9,738,638	3,547,697

Source BLM Public Land Statistics FY96-02

Table 3.5.1 Vegetation classification noting the division, order, and subclass of vegetation.

Division	Order	Class	Subclass
Vegetated	Tree Dominated	Closed Canopy	Evergreen Forest
			Deciduous Forest
			Mixed Evergreen–Deciduous Forest
		Open Tree Canopy	Evergreen Woodland
			Deciduous Woodland
			Mixed Evergreen–Deciduous Woodland
	Shrub Dominated	Shrubland	Evergreen Shrubland
			Deciduous Shrubland
			Evergreen Dwarf–Shrubland
			Deciduous Dwarf–Shrubland
	Herb Dominated	Herbaceous Vegetation	Perennial Graminoid
			Annual Graminoid or Forb
			Perennial Forb
Not included in National Vegetation Classification Standard			Riparian–Wetland

Table 3.5.2 Plant communities depicted within each of the 14 vegetation types.

Vegetation State	Plant Communities within Vegetative State
Evergreen Forest	Subalpine Spruce Fir–Mountain Hemlock, Red Fir, Mixed Sugar Pine, Ponderosa Pine, Ponderosa Pine/Shrub, Ponderosa Pine/Oak–Juniper–Pinyon, Jeffery Pine, Monterey Pine, Bishop Pine, Lodgepole Pine–Douglas Fir, White Fir–Douglas Fir, White Fir–Douglas Fir/Shrub, Douglas Fir–White Fir–Blue Spruce, Coastal Lodgepole Pine, California Bay, Eucalyptus, Inland Douglas Fir, Inland Douglas Fir–Western Red Cedar, Inland Western Red Cedar–Western Hemlock, Douglas Fir–Tanoak–Pacific Madrone, Douglas Fir–Sugar Pine–Ponderosa Pine, Douglas Fir–Ponderosa Pine–Incense Cedar, Pacific Silver Fir, Sitka Spruce, Ponderosa Pine–Lodgepole Pine, Colorado Mixed Forest, Western Larch–Grand Fir, Western White Pine, Grand Fir–Douglas Fir, Western Larch–Douglas Fir, Westside Western Hemlock–Western Red Cedar, Westside Douglas Fir–Western Hemlock, Westside Douglas Fir, Mountain Shrub/Clearcut, Costal Redwood
Deciduous Forests	Aspen, Aspen–Conifer, Bur Oak, Cypress, Ash, Maple, Russian Olive
Mixed Evergreen–Deciduous Forest	Combinations of the Evergreen and Deciduous Forest Types
Evergreen Woodland	Subalpine Fir, Knobcone Pine, Limber Pine, Manrean Pine, California Foothill Pine, Juniper, Pinyon Pine, Pinyon–Juniper, Chihuahua–Apache Pine, Madrean Pinyon Juniper
Deciduous Forest	Oregon White Oak, California Oak, Mixed Oak, Mesquite
Mixed Evergreen–Deciduous Woodland	Oregon White Oak–Conifer, California Oak–Conifer
Evergreen Shrubland	Southern Rockies Oak–Mahogany Shrub, Southern Rockies Oak–Manzanita Scrub, Bitterbrush, Interior Chaparral, California Chaparral, Mountain Mahogany, Sagebrush, Sagebrush/Perennial Grass, Rabbitbrush, Salt Desert Shrub, Blackbrush, Creosote–Bursage, Mojave Mixed Scrub, Great Basin Mormon Tea, Joshua Tree, Great Basin Saltbush Scrub, Mojave Creosotebush–Yucca, Shadscale–Mixed Grass–Mixed Scrub, Paloverde–Mixed Cacti–Scrubs, Crucifixion Thorn Chihuahuan Creosotebush Scrub, Costal Dune Scrub, Costal Sage, Costal Scrub, Sandsage Shrubland

Vegetation State	Plant Communities within Vegetative State
Deciduous Shrubland	Mesic Upland Shrub/Hardwoods, Warm Mesic Shrub, Greasewood, Hopsage, Catclaw Acacia, Smoketree, Scotch Broom
Evergreen Dwarf Shrubland	No examples on BLM Lands
Deciduous Dwarf Shrubland	Alaska and not within the affected environment of this EIS
Perennial Graminoid	Introduced Wheatgrass (e.g. Crested Wheatgrass, Intermediate Wheatgrass), Meadow, Forest Meadow, Alpine/Subalpine Meadows, Great Basin Grassland, California Native Perennial Grassland, Foothills Grassland, Shortgrass Prairie, Midgrass Prairie, Tallgrass Prairie, Desert Grassland, Semidesert Tobosa Grass-Scrub, Semidesert Mixed Grass, Chihuahuan Grassland
Annual Graminoid or Forb	California Disturbed Grassland (the annual plant dominated Central Valley portion of California), Cheatgrass/Mustard, Medusahead, Red Brome, Japanese Brome, Ventenata, Diffused Knapweed (annual or perennial), Yellow Starthistle
Perennial Forb	Spotted Knapweed, Russian Knapweed, Squarrose Knapweed, Rush Skeletonweed, Canada Thistle, Scotch Thistle (biennial), Whitetop (<i>Cardaria</i> spp.), Leafy Spurge, Mediterranean Sage, Purple Loosestrife, Dalmatian Toadflax
Riparian-Wetland	Wet Graminoid, Wet Forb

Table 3.5.2.1 Comparison of Condition of Lotic Riparian Habitat on BLM Lands, 1998 vs. 2001

Condition of Riparian Area	1998		2001		Change (%)
	Total Miles in Lower 48 States	(%)	Total Miles in Lower 48 States	(%)	
Proper Functioning Condition	13,230	36%	14,314	42%	+6%
Functioning-At-Risk	12,900	35%	14,657	43%	+8%
Non-Functional	3,251	9%	3,688	11%	+2%
Unknown	7,310	20%	1,478	4%	-16%

Table 3.5.2.2 Comparison of Lentic Riparian–Wetland Habitat on BLM Lands, 1998 vs. 2001

Condition of Riparian Area	1998		2001		Change (%)
	Total Acres in Lower 48 States	(%)	Total Acres in Lower 48 States	(%)	
Proper Functioning Condition	147,923	41%	166,796	51%	+10%
Functioning-At-Risk	45,135	13%	48,320	15%	+2%
Non-Functional	7,557	2%	6,409	2%	0%
Unknown	166,819	44%	107,135	32%	-12%

Table 3.10.2.1 U.S. Fish and Wildlife Service Birds of Conservation Concern 2002

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
Black-footed Albatross	Reddish Egret	Northern Harrier
Ashy Storm-Petrel	Swallow-tailed Kite	Swainson's Hawk
Swainson's Hawk	Northern Harrier	Ferruginous Hawk
Peregrine Falcon	Gray Hawk	Golden Eagle
Prairie Falcon	Common Black-Hawk	Peregrine Falcon
Greater Sage-Grouse (Columbia Basin population only)	White-tailed Hawk	Prairie Falcon
Yellow Rail	Ferruginous Hawk	Gunnison Sage-Grouse
Black Rail	Peregrine Falcon	Lesser Prairie-Chicken
Snowy Plover (except where Endangered)	Lesser Prairie-Chicken	Yellow Rail
Mountain Plover	Yellow Rail	Black Rail
Black Oystercatcher	Black Rail	American Golden-Plover
Whimbrel	American Golden-Plover	Snowy Plover
Long-billed Curlew	Snowy Plover	Mountain Plover
Marbled Godwit	Wilson's Plover	Solitary Sandpiper
Black Turnstone	Mountain Plover	Upland Sandpiper
Red Knot	American Oystercatcher	Long-billed Curlew
Short-billed Dowitcher	Long-billed Curlew	Marbled Godwit
Gull-billed Tern	Hudsonian Godwit	Buff-breasted Sandpiper
Elegant Tern	Red Knot	Wilson's Phalarope
Black Skimmer	Stilt Sandpiper	Black-billed Cuckoo
Xantus's Murrelet	Buff-breasted Sandpiper	Flammulated Owl
Yellow-billed Cuckoo	Gull-billed Tern	Burrowing Owl
Flammulated Owl	Least Tern (except where Endangered)	Short-eared Owl
Burrowing Owl	Black Skimmer	Lewis's Woodpecker
Black Swift	Red-billed Pigeon	Red-headed Woodpecker
Lewis's Woodpecker	Yellow-billed Cuckoo (western BCRs only)	Williamson's Sapsucker
Williamson's Sapsucker	Flammulated Owl	Red-naped Sapsucker
Red-naped Sapsucker	Whiskered Screech-Owl	White-headed Woodpecker
White-headed Woodpecker	Ferruginous Pygmy-Owl (Texas only)	Loggerhead Shrike
Olive-sided Flycatcher	Elf Owl	Bell's Vireo
Loggerhead Shrike (except	Burrowing Owl	Gray Vireo

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
where Endangered)		
Gray Vireo	Broad-billed Hummingbird	Bewick's Wren
Elepaio (except where Endangered)	Buff-bellied Hummingbird	Sprague's Pipit
Horned Lark (strigata ssp. only)	Lucifer Hummingbird	Virginia's Warbler
Crissal Thrasher	Elegant Trogon	Cassin's Sparrow
Le Conte's Thrasher	Lewis's Woodpecker	Brewer's Sparrow
Brewer's Sparrow	Red-headed Woodpecker	Grasshopper Sparrow
Tricolored Blackbird	Arizona Woodpecker	Baird's Sparrow
Lawrence's Goldfinch	Gilded Flicker	Henslow's Sparrow
	Northern Beardless-Tyrannulet	Le Conte's Sparrow
	Greater Pewee	Nelson's Sharp-tailed Sparrow
	Buff-breasted Flycatcher	McCown's Longspur
	Scissor-tailed Flycatcher	Chestnut-collared Longspur
	Rose-throated Becard	Dickcissel
	Loggerhead Shrike	Bobolink
	Bell's Vireo	
	Gray Vireo	
	Brown-headed Nuthatch	
	Sedge Wren	
	Bendire's Thrasher	
	Crissal Thrasher	
	Le Conte's Thrasher	
	Sprague's Pipit	
	Olive Warbler	
	Colima Warbler	
	Tropical Parula	
	Black-throated Gray Warbler	
	Grace's Warbler	
	Prairie Warbler	
	Cerulean Warbler	

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
	Prothonotary Warbler	
	Worm-eating Warbler	
	Swainson's Warbler	
	Louisiana Waterthrush	
	Kentucky Warbler	
	Red-faced Warbler	
	Rufous-winged Sparrow	
	Cassin's Sparrow	
	Bachman's Sparrow	
	Botteri's Sparrow	
	Black-chinned Sparrow	
	Sage Sparrow	
	Lark Bunting	
	Baird's Sparrow	
	Henslow's Sparrow	
	Le Conte's Sparrow	
	Nelson's Sharp-tailed Sparrow	
	Seaside Sparrow	
	Harris's Sparrow	
	McCown's Longspur	
	Smith's Longspur	
	Chestnut-collared Longspur	
	Varied Bunting	
	Painted Bunting	
	Hooded Oriole	
	Altamira Oriole	
	Audubon's Oriole	

Table 3.10.2.2 Species with increasing and decreasing trends during the breeding season on the San Pedro Riparian National Conservation Area, Arizona, before and after removal of cattle in late 1987, sorted by significance level of the trend.

Trend and species	Detections per kilometer					Annual change ^a
	1986	1987	1988	1989	1990	
INCREASING SPECIES						
Cassin's Sparrow (<i>Aimophila cassinii</i>)	0.06	0.92	5.19	5.15	2.15	2.42
Dusky-capped Flycatcher (<i>Myiarchus tuberculifer</i>)	0.03	0.07	0.09	0.32	0.31	1.93
N. Beardless-Tyrannulet (<i>Camptostoma imberbe</i>)	0.06	0.04	0.17	0.25	0.46	1.82
Yellow Warbler (<i>Dendroica petechia</i>)	3.21	6.05	8.77	17.68	16.71	1.55
Western Wood-Pewee (<i>Contopus sordidulus</i>)	1.51	1.62	2.18	3.23	4.17	1.31
Summer Tanager (<i>Piranga rubra</i>)	3.73	5.91	5.81	10.61	10.13	1.29
Abert's Towhee (<i>Pipilo aberti</i>)	6.14	7.28	8.63	13.11	15.43	1.28
Great Blue Heron (<i>Ardea herodias</i>)	0.24	0.65	0.42	0.43	0.97	1.27
Mallard (<i>Anas platyrhynchos</i>)	0.80	0.61	1.07	0.92	1.81	1.23
Blue Grosbeak (<i>Guiraca caerulea</i>)	2.92	5.20	4.46	6.19	7.22	1.22
Ash-throated Flycatcher (<i>Myiarchus cinerascens</i>)	1.81	2.36	2.41	3.66	3.74	1.21
Cassin's Kingbird (<i>Tyrannus vociferans</i>)	3.46	3.93	3.06	6.07	5.54	1.15
Common Yellowthroat (<i>Geothlypis trichas</i>)	1.27	3.24	5.36	12.95	14.71	1.87
Brown-headed Cowbird (<i>Molothrus ater</i>)	3.47	5.03	5.58	6.21	8.11	1.21
Vermilion Flycatcher (<i>Pyrocephalus rubinus</i>)	2.35	3.22	3.40	5.40	7.30	1.32
White-winged Dove (<i>Zenaida asiatica</i>)	1.93	2.69	3.37	7.54	10.78	1.56
Bewick's Wren (<i>Thryomanes bewickii</i>)	10.87	10.85	9.82	14.34	14.97	1.10
Yellow-breasted Chat (<i>Icteria virens</i>)	5.35	6.60	7.94	17.17	20.58	1.44
Lesser Goldfinch (<i>Carduelis psaltria</i>)	5.08	5.17	3.73	7.00	6.13	1.07
Gray Hawk (<i>Asturina nitida</i>)	0.57	0.92	0.54	0.84	1.15	1.14
Hooded Oriole (<i>Icterus cucullatus</i>)	0.00	0.17	0.21	0.20	0.41	1.86
Brown-crested Flycatcher (<i>Myiarchus tyrannulus</i>)	2.07	2.32	2.43	3.34	3.54	1.16
Mourning Dove (<i>Zenaida macroura</i>)	1.05	1.41	1.80	5.30	4.09	1.50
Common Raven (<i>Corvus corax</i>)	0.02	0.01	0.17	0.13	0.24	2.18
House Finch (<i>Carpodacus mexicanus</i>)	2.17	1.39	1.71	2.80	3.12	1.15
N. Rough-winged Swallow (<i>Stelgidopteryx serripennis</i>)	0.08	0.38	0.35	0.64	0.53	1.55
Black Phoebe (<i>Sayornis nigricans</i>)	0.27	0.15	0.10	0.51	0.92	1.44
Black-chinned Hummingbird (<i>Archilochus alexandri</i>)	0.57	0.57	0.50	0.71	1.63	1.26
Indigo Bunting (<i>Passerina cyanea</i>)	0.02	0.02	0.27	0.54	0.58	2.73
Lucy's Warbler (<i>Vermivora luciae</i>)	13.80	14.68	13.76	16.03	20.81	1.10
Bell's Vireo (<i>Vireo bellii</i>)	0.91	1.50	1.22	1.89	2.69	1.27

	<i>Detections per kilometer</i>					
	1986	1987	1988	1989	1990	
Phainopepla (<i>Phainopepla nitens</i>)	0.11	0.10	0.78	0.16	0.64	1.47
Yellow-billed Cuckoo (<i>Coccyzus americanus</i>)	0.43	0.63	0.78	0.96	1.19	1.28
Common Ground-Dove (<i>Columbina passerina</i>)	0.08	0.18	0.07	0.54	0.41	1.57
Red-winged Blackbird (<i>Agelaius phoeniceus</i>)	0.08	0.01	0.16	0.12	0.31	1.71
Song Sparrow (<i>Melospiza melodia</i>)	1.09	0.80	1.39	3.00	4.18	1.49
Turkey Vulture (<i>Cathartes aura</i>)	0.51	0.00	3.68	1.37	0.85	1.40
Ladder-backed Woodpecker (<i>Picoides scalaris</i>)	1.52	1.67	1.62	1.59	2.10	1.06
Gila Woodpecker (<i>Melanerpes uropygialis</i>)	2.63	2.41	2.47	3.07	2.79	1.04
Bullock's Oriole (<i>Icterus bullockii</i>)	1.55	1.67	1.56	2.21	1.69	1.05
Botteri's Sparrow (<i>Aimophila botterii</i>)	1.83	2.61	1.47	4.21	2.40	1.11
White-breasted Nuthatch (<i>Sitta carolinensis</i>)	1.24	1.72	1.30	1.66	1.50	1.03
DECREASING SPECIES						
Great Horned Owl (<i>Bubo virginianus</i>)	0.43	0.42	0.21	0.47	0.33	0.96
Northern Cardinal (<i>Cardinalis cardinalis</i>)	0.46	0.20	0.25	0.43	0.25	0.95
Killdeer (<i>Charadrius vociferus</i>)	1.43	0.67	0.57	0.56	0.50	0.80
European Starling (<i>Sturnus vulgaris</i>)	0.64	0.72	0.70	0.55	0.21	0.78
House Sparrow (<i>Passer domesticus</i>)	0.34	0.49	0.38	0.09	0.00	0.51
Greater Roadrunner (<i>Geococcyx californianus</i>)	0.72	0.43	0.33	0.21	0.26	0.76
Eastern Meadowlark (<i>Sturnella magna</i>)	1.43	1.52	1.00	1.71	0.80	0.90
Black-throated Sparrow (<i>Amphispiza bilineata</i>)	1.86	0.91	0.89	0.64	0.76	0.81
Verdin (<i>Auriparus flaviceps</i>)	0.69	0.79	0.33	0.10	0.34	0.71
Red-tailed Hawk (<i>Buteo jamaicensis</i>)	0.22	0.17	0.16	0.20	0.09	0.84
Cactus Wren (<i>Campylorhynchus brunneicapillus</i>)	0.53	0.55	0.40	0.39	0.18	0.78
Crissal Thrasher (<i>Toxostoma crissale</i>)	0.93	0.44	0.60	0.68	0.44	0.90
Cooper's Hawk (<i>Accipiter cooperii</i>)	0.26	0.10	0.07	0.16	0.14	0.92
Bushtit (<i>Psaltiriparus minimus</i>)	2.16	1.23	1.85	1.89	1.31	0.94
Gambel's Quail (<i>Callipepla gambelii</i>)	3.12	2.52	1.28	2.64	1.79	0.90
Northern Mockingbird (<i>Mimus polyglottos</i>)	1.72	1.34	1.28	1.17	1.05	0.89
Western Kingbird (<i>Tyrannus verticalis</i>)	2.08	1.52	1.56	1.61	1.70	0.97
Northern Flicker (<i>Colaptes auratus</i>)	1.83	1.85	1.45	1.77	1.66	0.98
Canyon Towhee (<i>Pipilo fuscus</i>)	0.52	0.39	0.37	0.51	0.36	0.96

(Source: Krueper et al. 2003)

Table 3.15.2.1 Bureau of Land Management Cultural Resource Inventory Data.

Total BLM-administered lands (acres)	Total acres inventoried	Percentage of lands inventoried	Number of cultural properties recorded	Number of cultural properties eligible for the National Register of Historic Places
264,200,000	15,475,300	5.9%	255,252	13,952

From "Public Land Statistics 2001"

Table 3.15.2.2 Bureau of Land Management Significant Cultural Resource Areas.

Designation	Number
National Historic Trails	15 (total mileage: 26,373 miles)
Properties listed on the National Register of Historic Places	4,206
National Historic Landmarks	22
World Heritage Sites	5

From National Park Service Long Distance Trails Office statistics

Table 3.16.1 Permits, leases, and authorized use, 2002.

State	Permits or Leases	Active AUMs	Billed AUMs	Nonuse AUMs	Percent Nonuse
Arizona	770	684,270	369,164	315,106	46%
California	608	375,246	178,879	196,367	52%
Colorado	1,603	643,520	341,751	301,769	47%
Idaho	1,939	1,317,041	843,937	473,104	36%
Montana	4,297	1,370,028	1,053,142	316,886	23%
Nevada	2,312	1,865,779	1,321,494	544,285	29%
New Mexico	642	2,162,719	1,131,608	1,031,111	48%
Oregon	1,624	1,067,465	711,816	355,649	33%
Utah	1,557	1,237,940	746,236	491,704	40%
Wyoming	2,790	1,973,173	1,174,792	798,381	40%
Total	18,142	12,697,181	7,872,819	4,824,362	38%

Note: Montana includes North and South Dakota, New Mexico includes Oklahoma, Oregon includes Washington, and Wyoming includes Nebraska.

Source: PLS 2002.

Table 3.16.2 Number of permits or leases and active or nonuse AUMs since 1996.

Year	Permits or Leases	Active AUMs	Billed AUMs	Nonuse AUMs	Percent Nonuse
1996	18,795	13,086,335	9,738,638	3,347,697	26%
1997	18,769	13,070,176	9,445,482	3,624,694	28%
1998	18,698	13,015,303	10,353,032	2,662,271	20%
1999	18,468	12,994,883	10,087,988	2,906,895	22%
2000	18,393	12,810,487	9,837,588	2,972,899	23%
2001	18,382	12,776,369	8,112,008	4,664,361	37%
2002	18,142	12,697,181	7,872,819	4,824,362	38%

Source: PLS 2002

Table 3.16.3 Percent Dependency of Counties in Eleven Western States on Federal Forage

Dependency Level	Number of Counties	Percentage of Total	Cumulative Percentage of Total
0–0%	258	62%	62%
10–30%	82	20%	82%
30–50%	36	9%	91%
50–80%	27	6%	97%
80–100%	13	3%	100%
Total	416	100%	100%

Source: USDA ERS 2002

Table 3.16.4 Average Dependency Level for Cattle and Sheep by State for the 11 Western States (includes both BLM and Forest Service rangelands)

State	Average Cattle Dependency	Average Sheep Dependency
Arizona	60%	*
California	15%	24%
Colorado	25%	37%
Idaho	23%	35%
Montana	11%	35%
Nevada	36%	43%
New Mexico	44%	49%
Oregon	23%	27%
Utah	35%	47%
Washington	13%	*
Wyoming	23%	29%
* Sheep budgets were not prepared since few sheep graze on Federal land in these States.		

Source: Forest Service and BLM 1992.

Table 3.17.1 State and regional population change in the West, 1990 to 2000

State	Population 1990	Population 2000	Change 1990 to 2000 (%)
Nevada	1,201,833	1,998,257	66.3
Arizona	3,665,228	5,130,632	40.0
Colorado	3,294,394	4,301,261	30.6
Utah	1,722,850	2,233,169	29.6
Idaho	1,006,749	1,293,953	28.5
Washington	4,866,692	5,894,121	21.1
Oregon	2,842,321	3,421,399	20.4
New Mexico	1,515,069	1,819,046	20.1
California	29,760,021	33,871,648	13.8
Montana	799,065	902,195	12.9
Wyoming	453,588	493,782	8.9

Regions and Nation	Population 1990	Population 2000	Change 1990 to 2000 (%)
West	52,786,082	63,197,932	19.7
South	85,445,930	100,236,820	17.3
Midwest	59,668,632	64,392,776	7.9
Northeast	50,809,229	53,594,378	5.5
Nation	248,709,873	281,421,906	13.2

Source: United States Census Bureau 2003

Table 3.17.2 Rural and urban populations in the West, 1990 and 2000

State	Urban 1990 (%)	Rural 1990 (%)	Urban 2000 (%)	Rural 2000 (%)	Urban change 1990 to 2000 (%)
California	92.6	7.4	94.4	5.6	1.8
Nevada	88.3	11.7	91.5	8.5	3.2
Utah	87.0	13.0	88.2	11.8	1.2
Arizona	87.5	12.5	88.2	11.8	0.7
Colorado	82.4	17.6	84.5	15.5	2.0
Washington	76.4	23.6	82.0	18.0	5.6
Oregon	70.5	29.5	78.7	21.3	8.3
New Mexico	73.0	27.0	75.0	25.0	2.0
Idaho	57.4	42.6	66.4	33.6	9.0
Wyoming	65.0	35.0	65.1	34.9	0.1
Montana	52.5	47.5	54.1	45.9	1.5

Nation by region	Urban 1990 (%)	Rural 1990 (%)	Urban 2000 (%)	Rural 2000 (%)	Urban change 1990 to 2000 (%)
West	86.3	13.7	88.6	11.4	2.4
Northeast	78.9	21.1	84.4	15.6	5.5
Midwest	71.7	28.3	74.7	25.3	3.0
South	68.6	31.4	72.8	27.2	4.2
Nation	75.2	24.8	79.0	21.0	3.8

Source: United States Census Bureau 2003

Table 3.17.3 Metropolitan, nonmetropolitan, and public land county population change in Western States, 1990 to 2000.^a

County type	Population 1990	Population 2000	Proportion of population 1990 (%)	Proportion of population 2000 (%)	Population change 1990 to 2000 (%)
Nonmetropolitan, nonpublic land counties	2,728,251	3,139,775	5.3	5.1	15.1
Metropolitan counties	44,476,002	53,251,277	86.9	86.8	19.7
Nonmetropolitan public land counties	3,974,974	4,968,411	7.8	8.1	25.0

^aTotals do not include Hawaii and Alaska. Source: United States Census Bureau 2003 (Cook and Miser 1994).

Table 3.17.4 Ranch income by source (Gentner and Tanaka 2000).^a

Rancher type	Ranch Income by Source		
	Ranch (%)	Other Ag/Forestry (%)	All Other (%)
Dependent Family Rancher	84.7	6.0	9.2
Sheep Rancher	80.8	2.1	17.0
Diversified Family Rancher	74.9	10.4	14.4
Corporate Rancher	71.9	9.2	18.8
Retired Hobbyist	21.5	21.4	56.3
Trophy Rancher	21.1	7.7	70.6
Working Hobbyist	18.2	2.3	79.5
Small Hobbyist	13	5	84

^a Totals may not sum due to rounding.

Table 3.17.5 Goals and objectives for ranching (Gentner and Tanaka 2002).^a

Rancher type	Family Tradition	Raise Family	Close to Friends	Pass to Children	Profit	Lack Skills	Environmental Purposes
Hobbyists							
Small Hobbyist	3.7	3.7	2.8	1.5	2.6	1.5	2.4
Retired Hobbyist	4.6	4.6	3.9	4.3	3.7	2.3	2.2
Working Hobbyist	4.5	4.6	3.5	4.2	3.6	1.8	2.3
Trophy Rancher	3.4	3.3	2.1	4.0	2.6	1.3	2.1
Professionals							
Diversified Family Rancher	4.1	4.2	2.9	2.3	3.7	2.0	1.9
Dependent Family Rancher	4.9	4.9	4.4	4.8	4.2	3.3	2.3
Corporate Rancher	4.5	4.5	3.5	4.1	3.6	2.3	2.0
Sheep Rancher	4.4	4.5	3.2	3.8	3.5	2.3	2.0
P - value	ns	0.0001	0.001	ns	0.0001	0.001	0.001

^a Average on a scale of 1 = low to 5 = high.

Table 3.17.6 Months of labor required to run the ranch (Gentner and Tanaka 2000)

Rancher type	Family laborer (months)	Hired laborer (months)
Sheep Rancher	27.5	45.3
Corporate Rancher	26.7	32.0
Dependent Family Rancher	24.6	3.6
Diversified Family Rancher	20.7	4.3
Retired Hobbyist	17.2	4.8
Working Hobbyist	14.9	2.3
Trophy Rancher	13.5	28.2
Small Hobbyist	10.5	4.5

Table 3.17.7 Example of social organization process in ranching communities

Social Organization Process			
Differentiation	Extra-Local Ties	Stratification	Integration
Dilutes local economic and social power of ranchers and their values	Globalization of industry reduces value of local economic ties	Stratification becomes an actionable value, e.g. ranchers criticism of new economy	Highly capable of incorporating community-oriented values into actions
Differentiation goes up, web of affiliation for ranchers can narrow or expand—often has community focus	Extra-local ties can increase value of local social networks	Equitable stratification reduces utility of status or creates social leveling	High integration facilitates community-oriented actions by ranchers
Reduces value of group membership; can extend to rancher unwillingness to see community as locus of support	Extra-local ties include increased conflict between ranchers and nonlocal groups	New dimensions of stratification reduce community as source of mutual support for ranching	Degree of integration affects extent and density of local social networks

Table 3.17.8 Recent population change in Census Subdivisions, Lemhi County, Idaho

Census Subdivision	Population		
	1990	2000	% Change
Forney	67	53	-20.9%
Leadore	594	638	7.4%
Patterson	387	493	27.4%
Salmon	5,851	6,622	13.2%
Lemhi County Total	6,899	7,806	13.1%

Source: U.S. Census 2003.

Table 3.17.9 Attendance, Graduates and Local Taxes per ADA, 1995 to 2002

	School Year						
	2001-2002	2000-2001	1999-2000	1998-1999	1997-1998	1996-1997	1995-1996
Average Daily Attendance	115	146	147	166	171	156	138
High School Graduates	7	23	9	15	6	8	8
<i>Adjusted Local Taxes Per ADA*</i>							
South Lemhi District	\$ 1,233	\$ 1,119	\$ 1,100	\$ 1,001	\$ 899	\$ 901	\$ 1,020
Salmon District	\$ 1,101	\$ 1,100	\$ 1,118	\$ 997	\$ 947	\$ 811	\$ 810
State of Idaho	\$ 1,644	\$ 1,627	\$ 1,561	\$ 1,482	\$ 1,416	\$ 1,250	\$ 1,256

* 1996 = 100.

Source: Idaho Department of Education.

Table 4.2.13.1 Cost Recovery under Current Service Charges

Action	Current Service Charge	Average Unit Cost to Complete Action	Net Cost Recovery
Transfer Grazing Preference	\$10	\$2,255	- \$2,245
Crossing Permit	\$10	\$339	- \$329
Supplemental Grazing Billing	\$10	\$339	- \$329

Source: BLM *Management Information System 2003*

Table 4.3.13.1 Cost Recovery under Proposed Service Charges

Action	Proposed Service Charge	Current Service Charge	Difference (i.e. increase in cost recovery)	Average Unit Cost to Complete Action	Net Cost Recovery
Transfer Grazing Preference	\$145	\$10	\$135	\$2,255	- \$2,110
Crossing Permit	\$75	\$10	\$65	\$339	- \$264
Supplemental Grazing Billing	\$50	\$10	\$40	\$339	- \$289

Source: BLM *Management Information System 2003*

Table 4.3.14.1 Social Effects of the Proposed Action

Element	Group	Direct Impact	Indirect Impact	Cumulative Impact	Regional Differences	Likelihood of Occurrence
Social, Economic and Cultural Considerations in the Decision-Making Process	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Implementation of Changes in Grazing Use	Permittees	Positive	None	None	None	Good
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Range Improvement Ownership	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Cooperation with State, Local, and County Established Grazing Boards	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Review of Biological Assessments and Evaluations	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Temporary Nonuse	Permittees	Negative	None	Negative	None	Potential
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Basis for Rangeland Health Determinations	Permittees	Minor Positive	None	Minor Positive	None	Potential
	Conservation & Environmental	Minor Positive	None	Minor Positive	None	Potential
	Recreation	Minor Positive	None	Minor Positive	None	Potential
Biological Assessments – Application of Protest and Appeal Provisions	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Timeframe for Meeting Rangeland Health Standards	Permittees	Minor Positive	None	None	None	Potential
	Conservation & Environmental	Minor Negative	None	None	None	Potential
	Recreation	Minimal				

Element	Group	Direct Impact	Indirect Impact	Cumulative Impact	Regional Differences	Likelihood of Occurrence
Conservation Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition of Grazing Preference, Permitted Use, and Active Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition and Role of Interested Public	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Water Rights	Permittees	Positive	None	Positive	Yes	Good
	Conservation & Environmental	Negative	None	Negative	Yes	Potential
	Recreation	Minimal				
Satisfactory Performance of Permittee or Lessee	Permittees	Minimal				
	Conservation & Environmental	Minor Positive	None	None	None	Potential
	Recreation	Minimal				
Changes in Grazing Use Within the Terms and Conditions of the Permit or Lease	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition and Role of Interested Public	Permittees	Minimal				
	Conservation & Environmental	Minimal				
Service Charges	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Prohibited Acts	Permittees	Minimal				
	Conservation & Environmental	Negative		Negative		Potential
	Recreation	Negative		Negative		
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Element	Group	Direct Impact	Indirect Impact	Cumulative Impact	Regional Differences	Likelihood of Occurrence
Definition of Grazing Preference, Permitted Use, and Active Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Table 4.4.14.1 Social Effects of the Modified Action Alternative Three

Element	Group	Direct Impact	Indirect Impact	Cumulative Impact	Regional Differences	Likelihood of Occurrence
Implementation of Changes in Grazing Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Basis for Rangeland Health Determinations	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Temporary Nonuse	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Figure 1.1 Public Lands in the West

Draft EIS - List of Figures

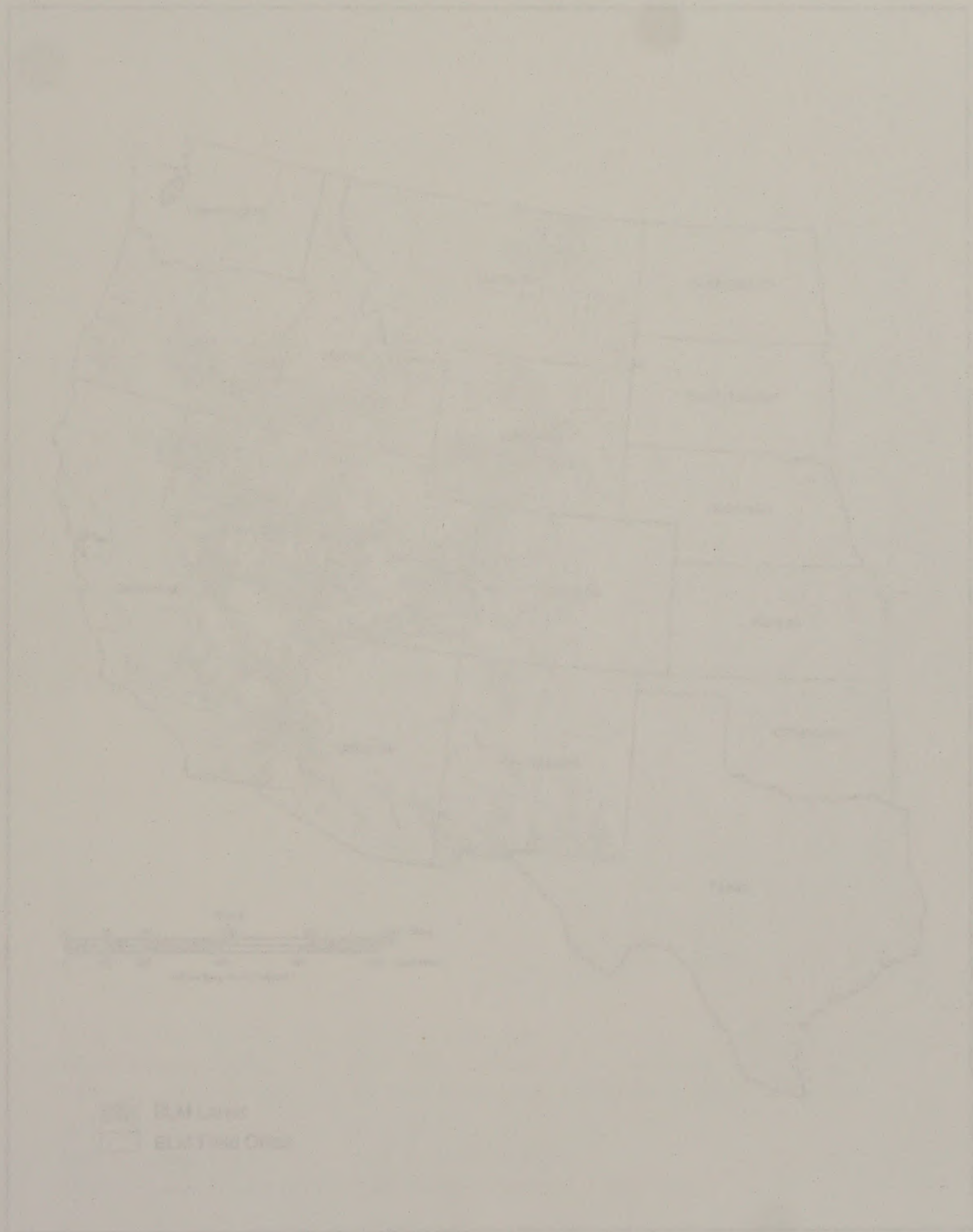


Figure 1.1 Public Lands in the West.

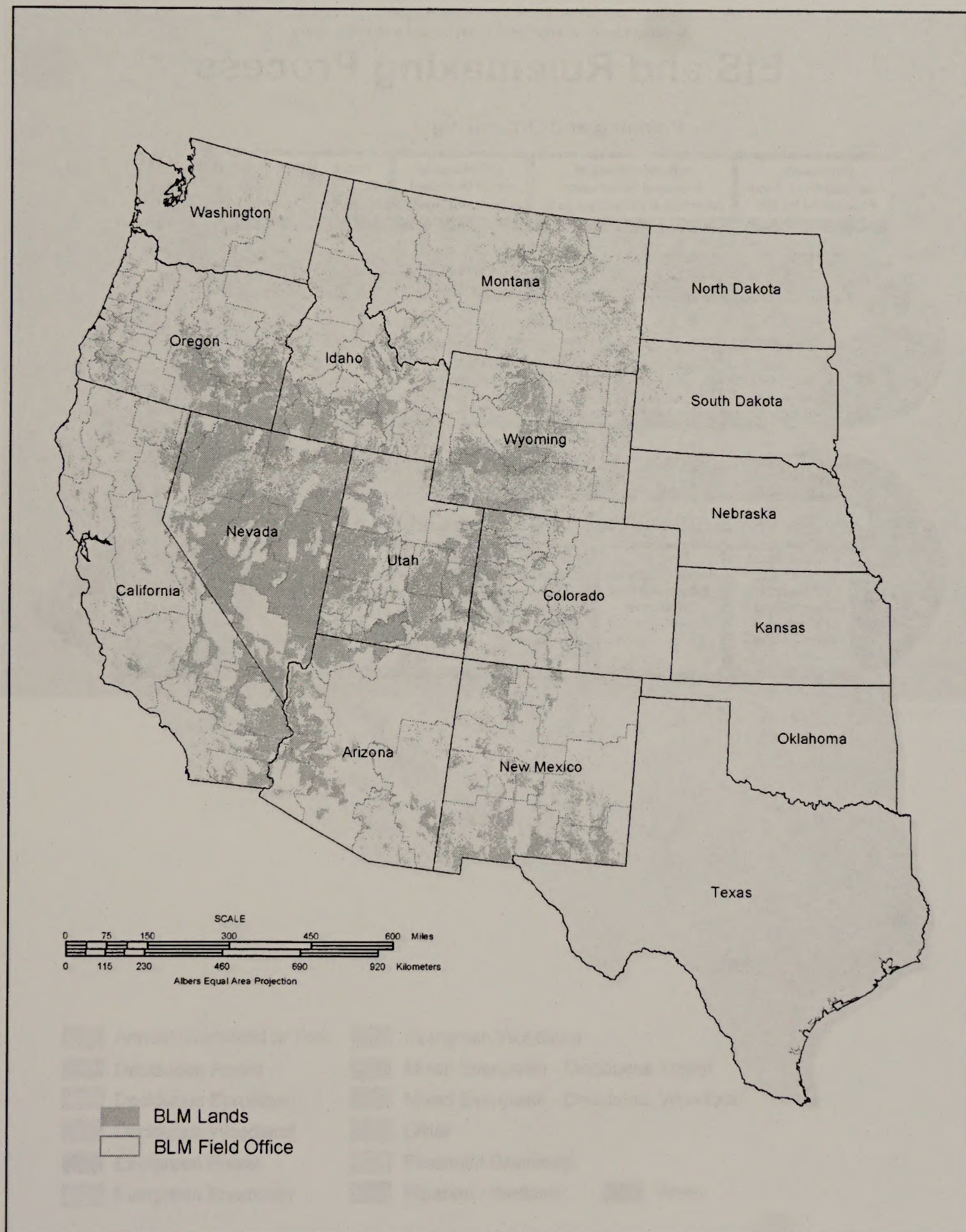


Figure 1.4 EIS and Rulemaking Process.

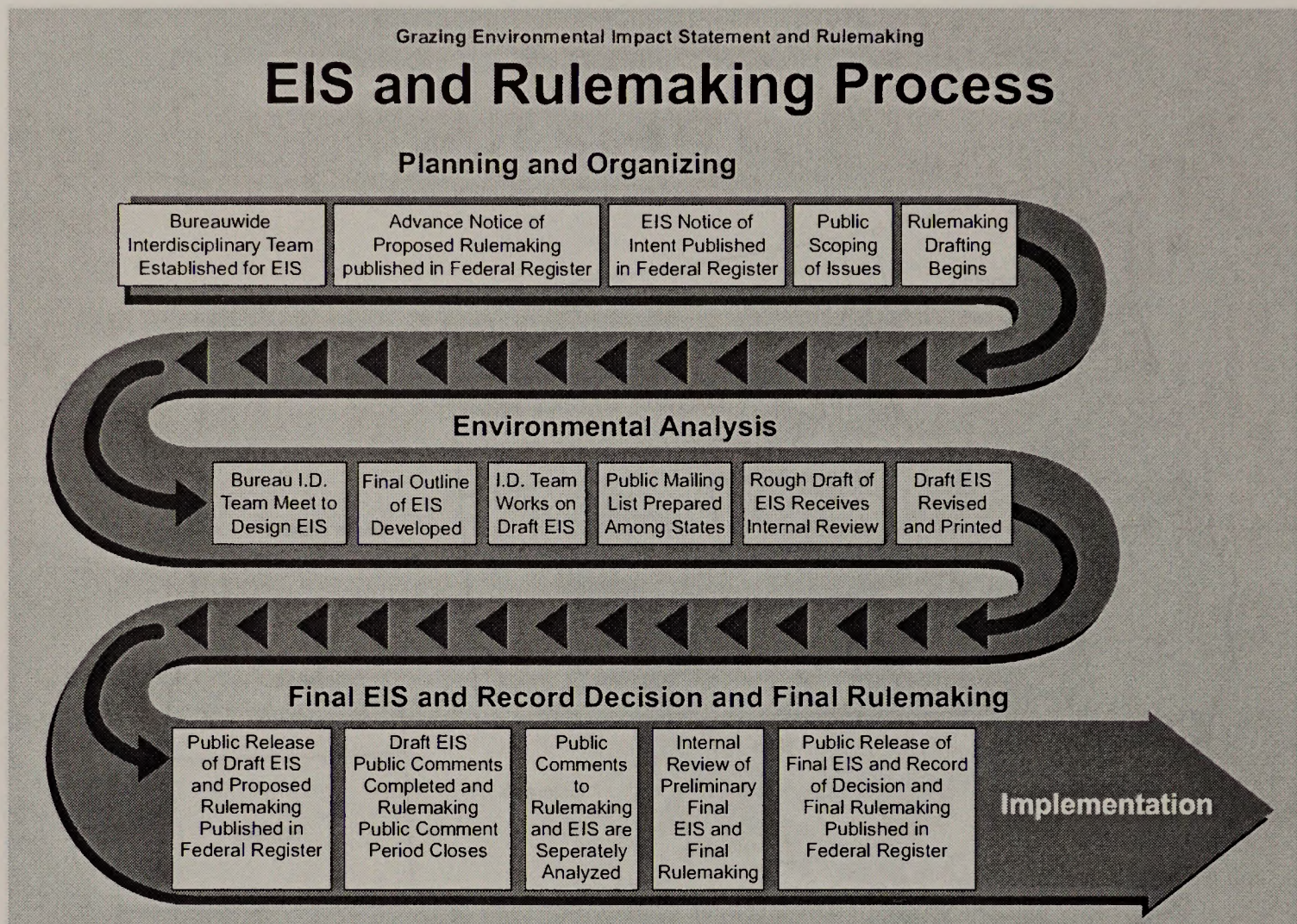


Figure 3.5.1 Vegetation classification: subclass.



Figure 3.5.1.1 State-and-transition model incorporating the concepts of community pathways between plant community phases within states, reversible transitions, multiple thresholds, irreversible transitions, multiple pathways of change, and multiple steady states (Stringham et al. 2003).

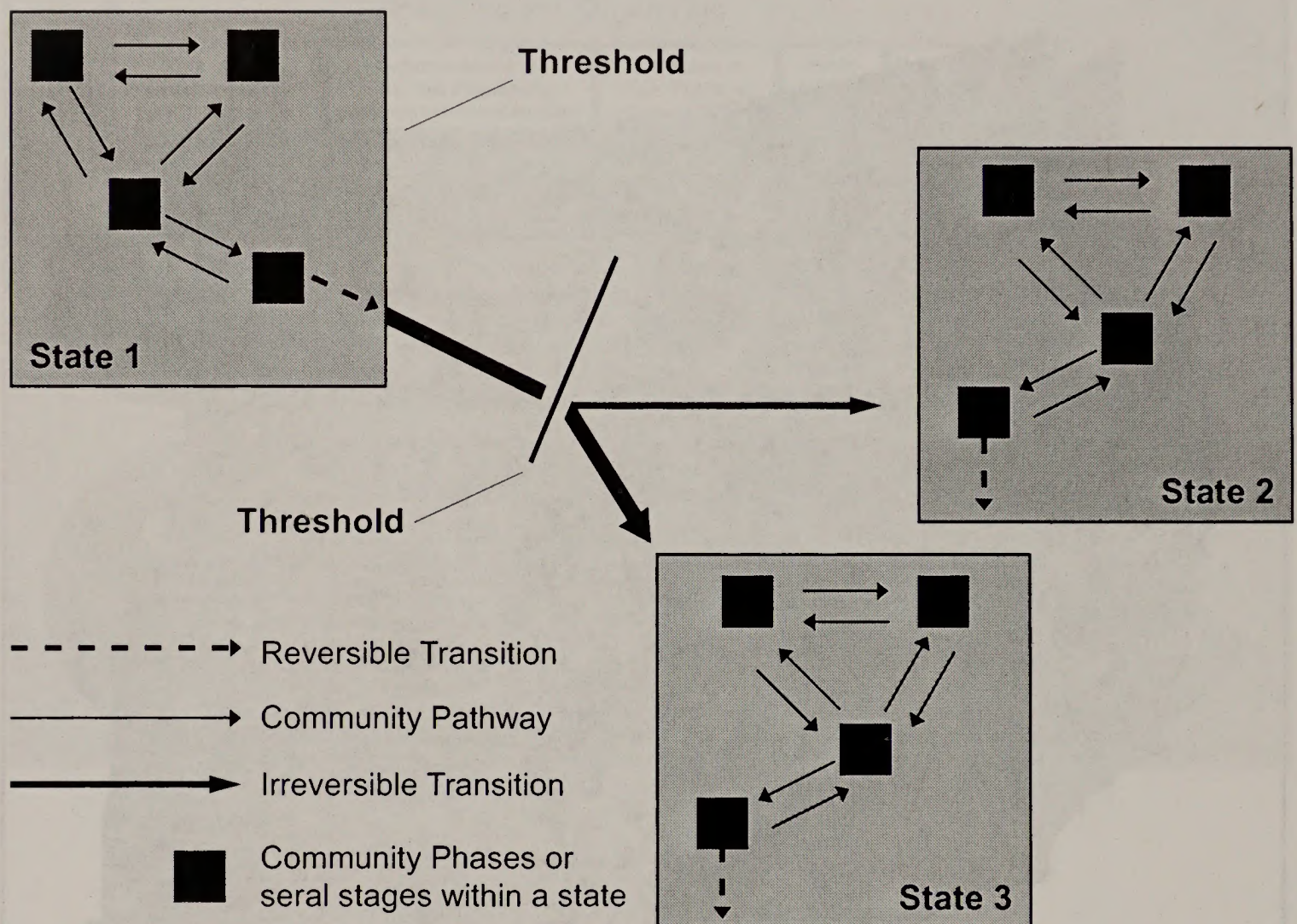


Figure 3.5.2.1 Condition of lotic riparian areas on BLM lands (lower 48 States), 2001.

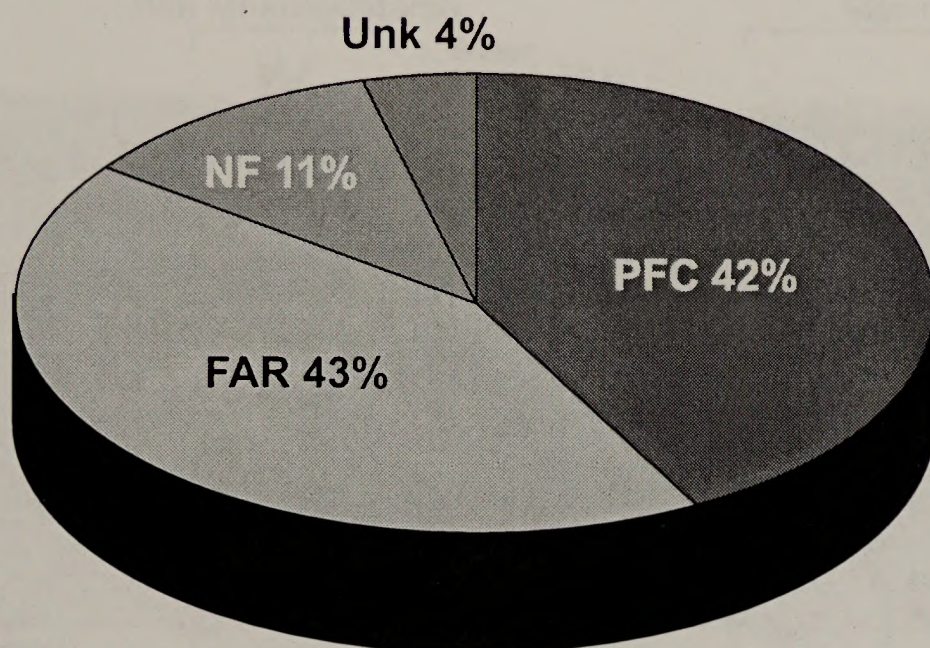


Figure 3.5.2.2 Condition of lentic riparian areas on BLM lands (lower 48 States), 2001.

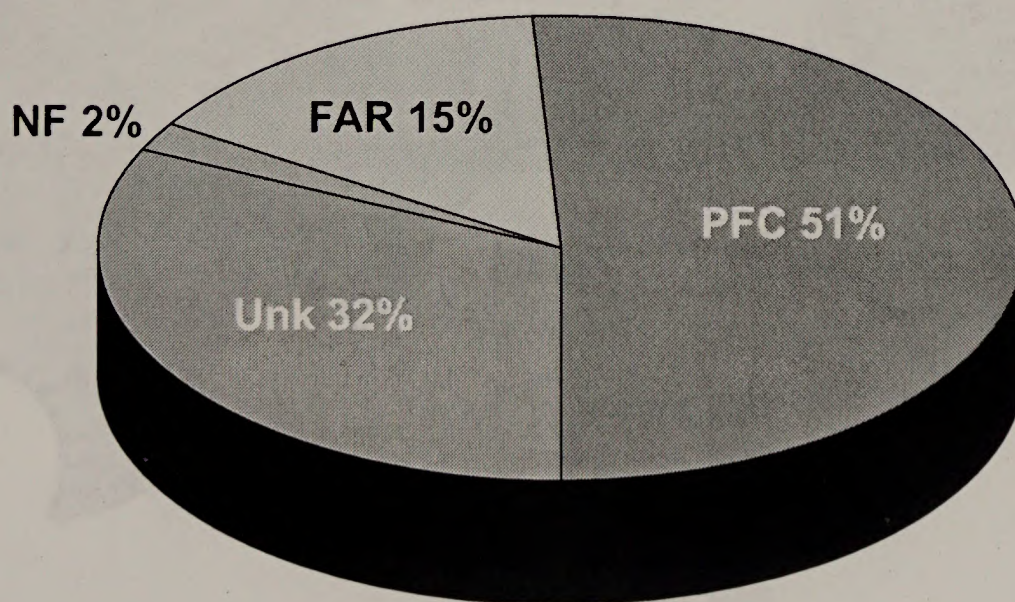


Figure 3.7.1.1 Generalized soil map.

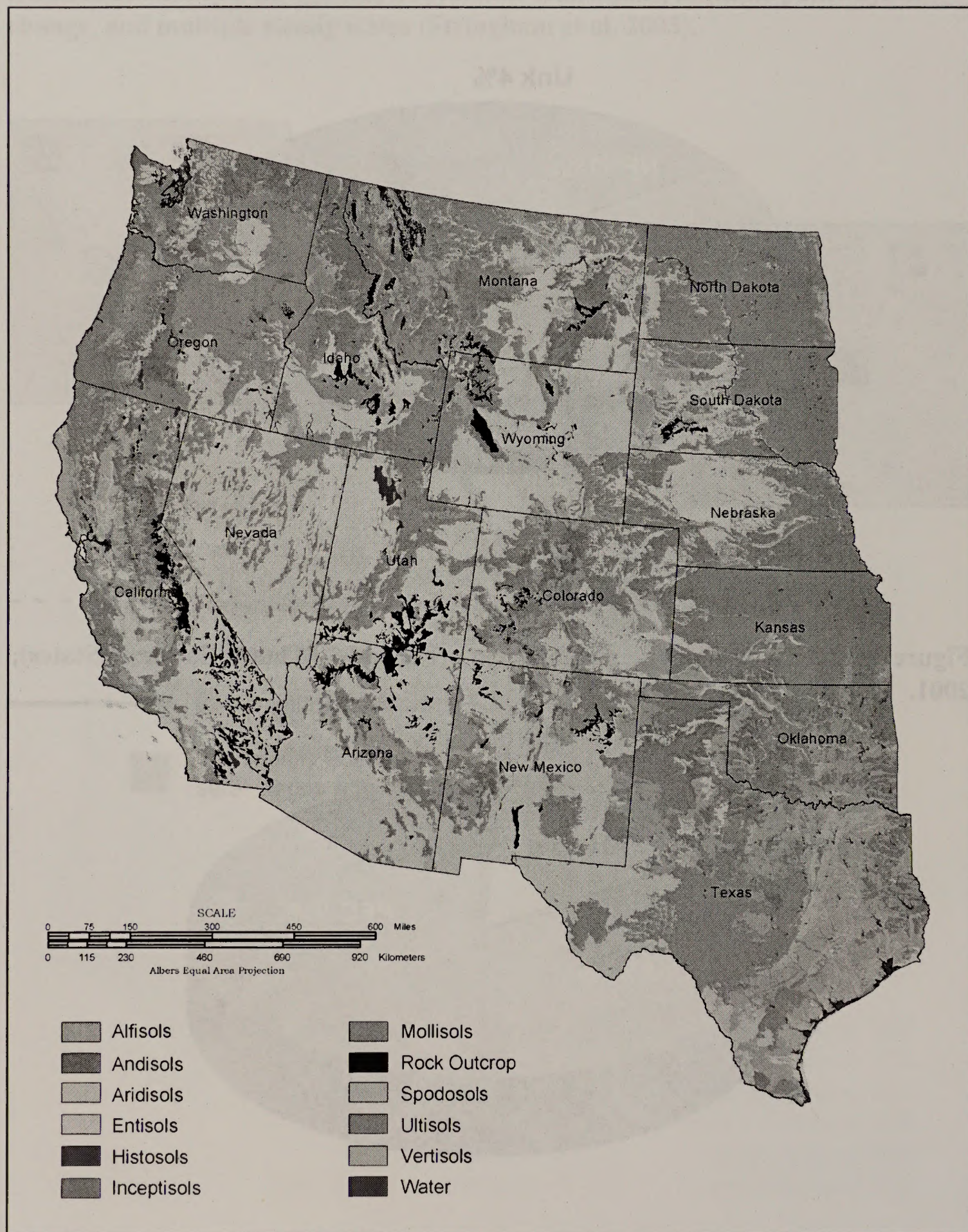


Figure 3.10.3.1.1 Sequential degrading of a stream channel and its associated riparian community (BLM 1993).

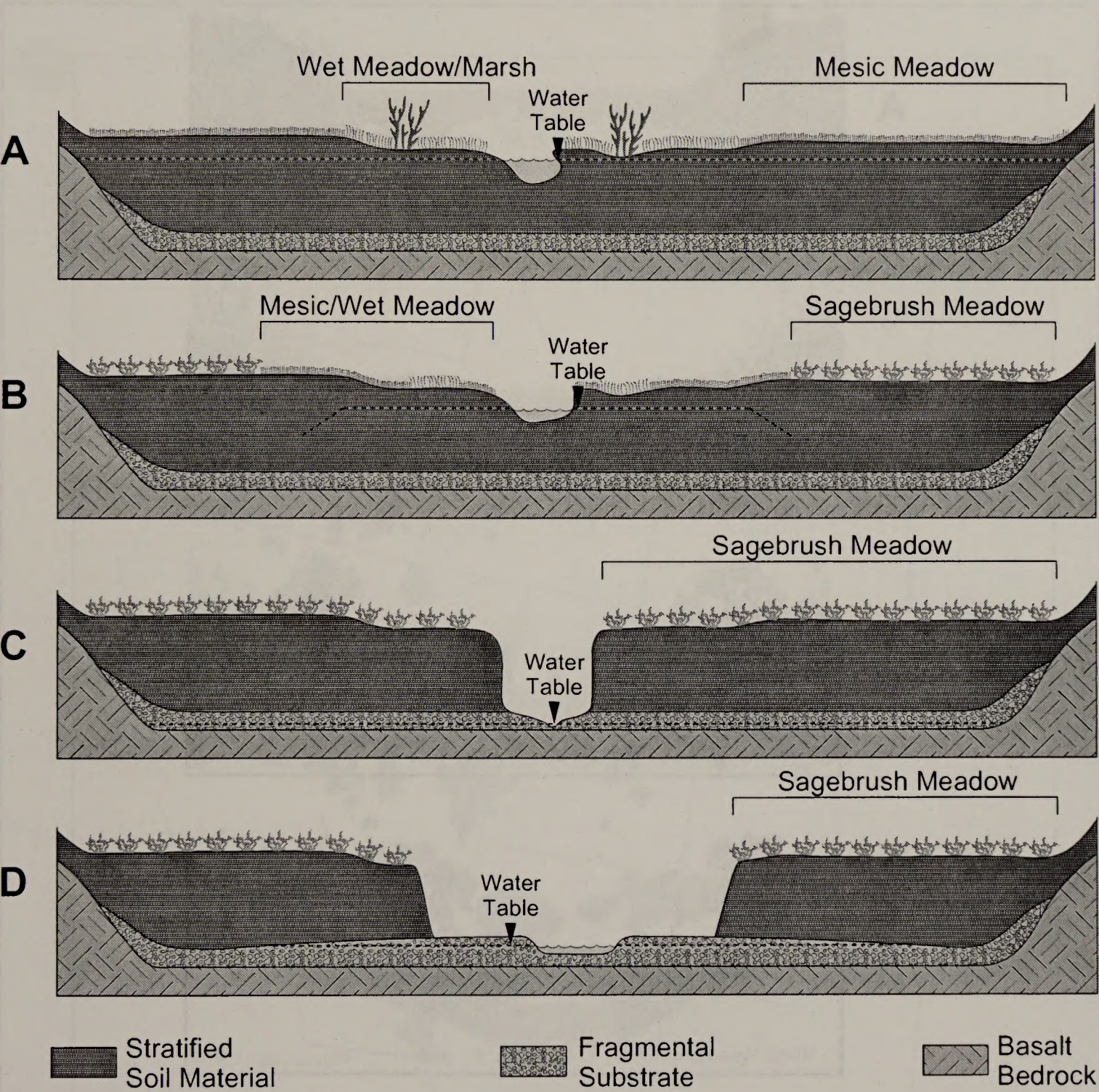
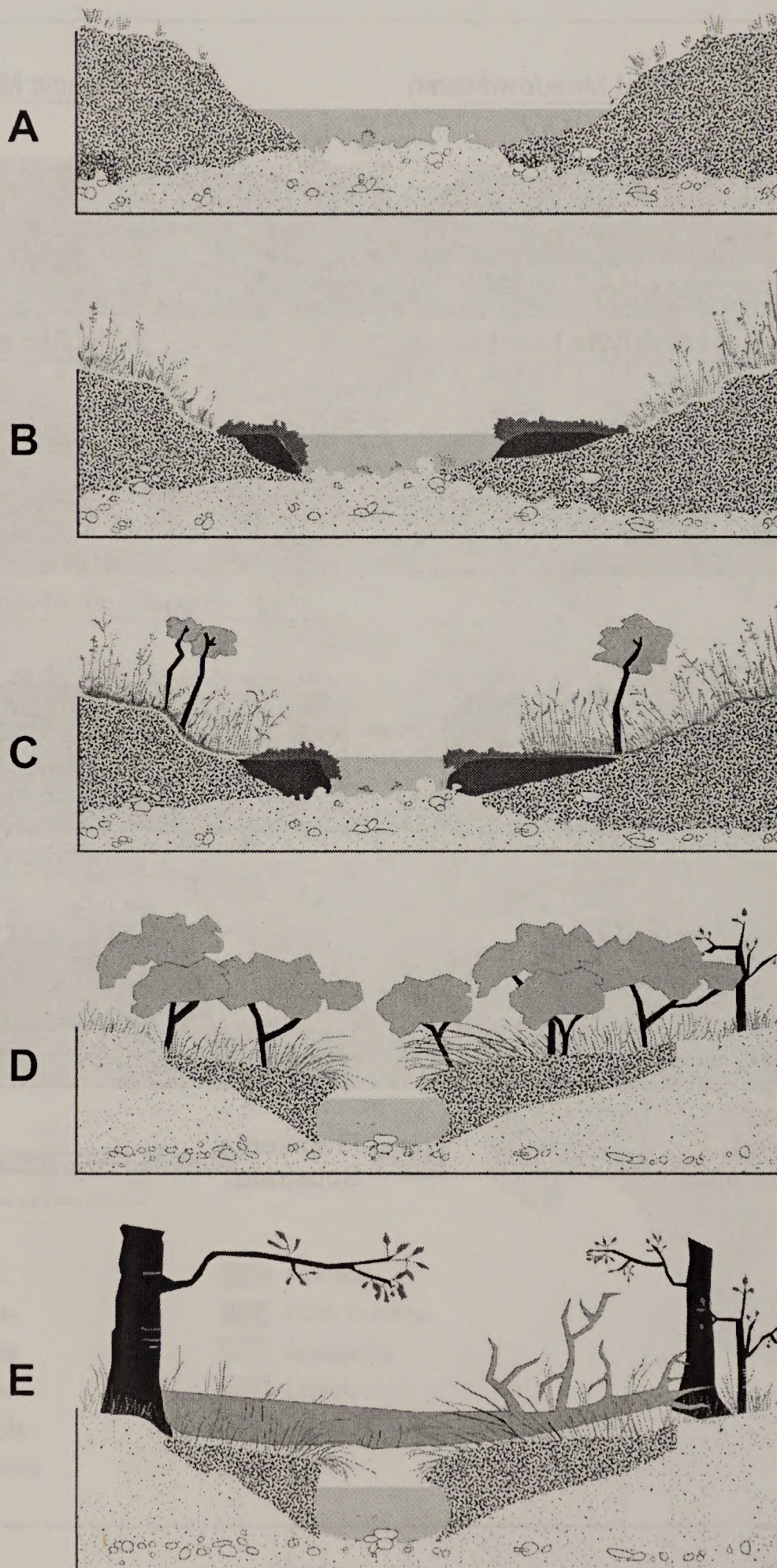


Figure 3.10.3.1.2 Stages in the recovery of a stream-associated riparian area.



Source: BLM 1993g

Figure 3.12.1 Herd Management Area.

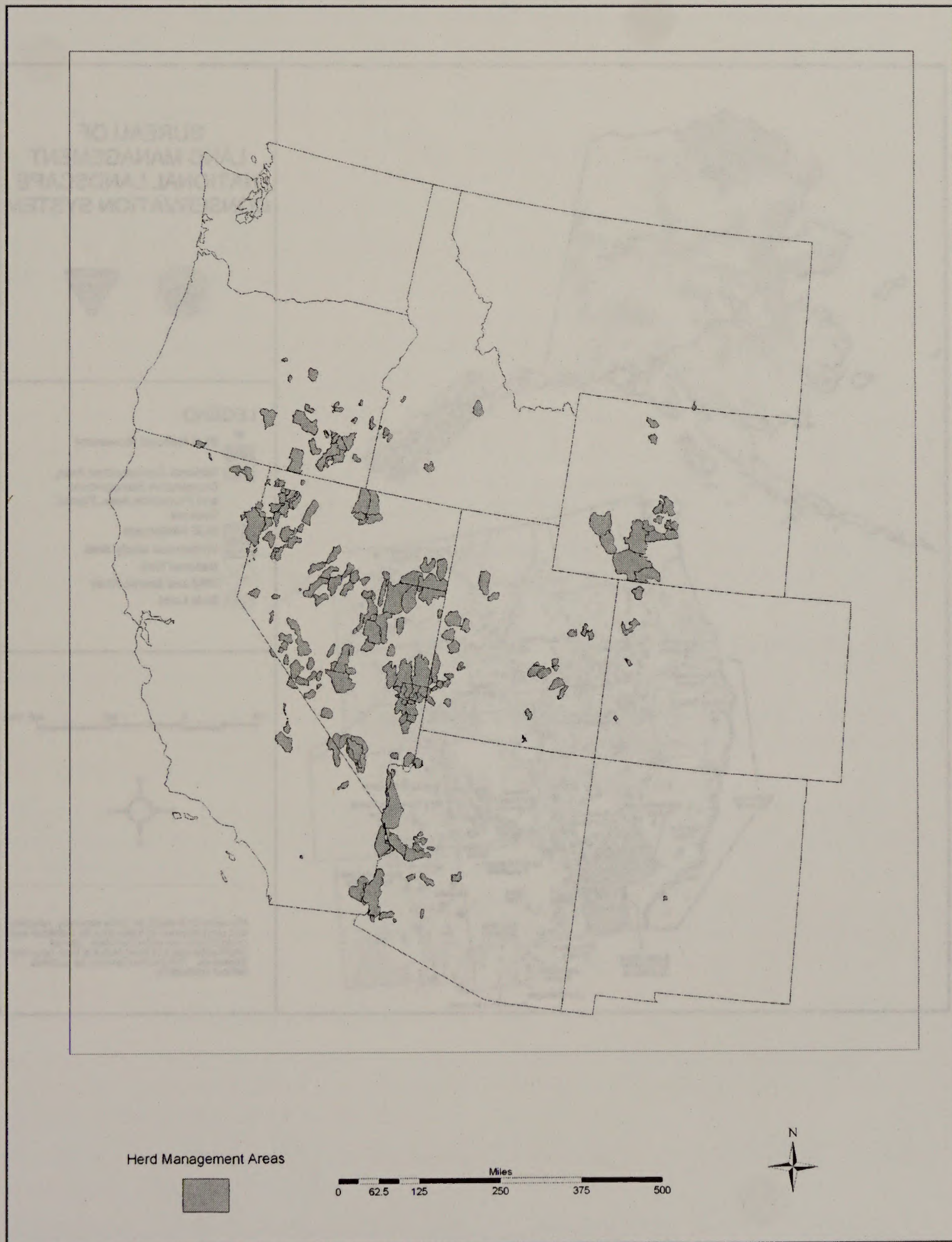
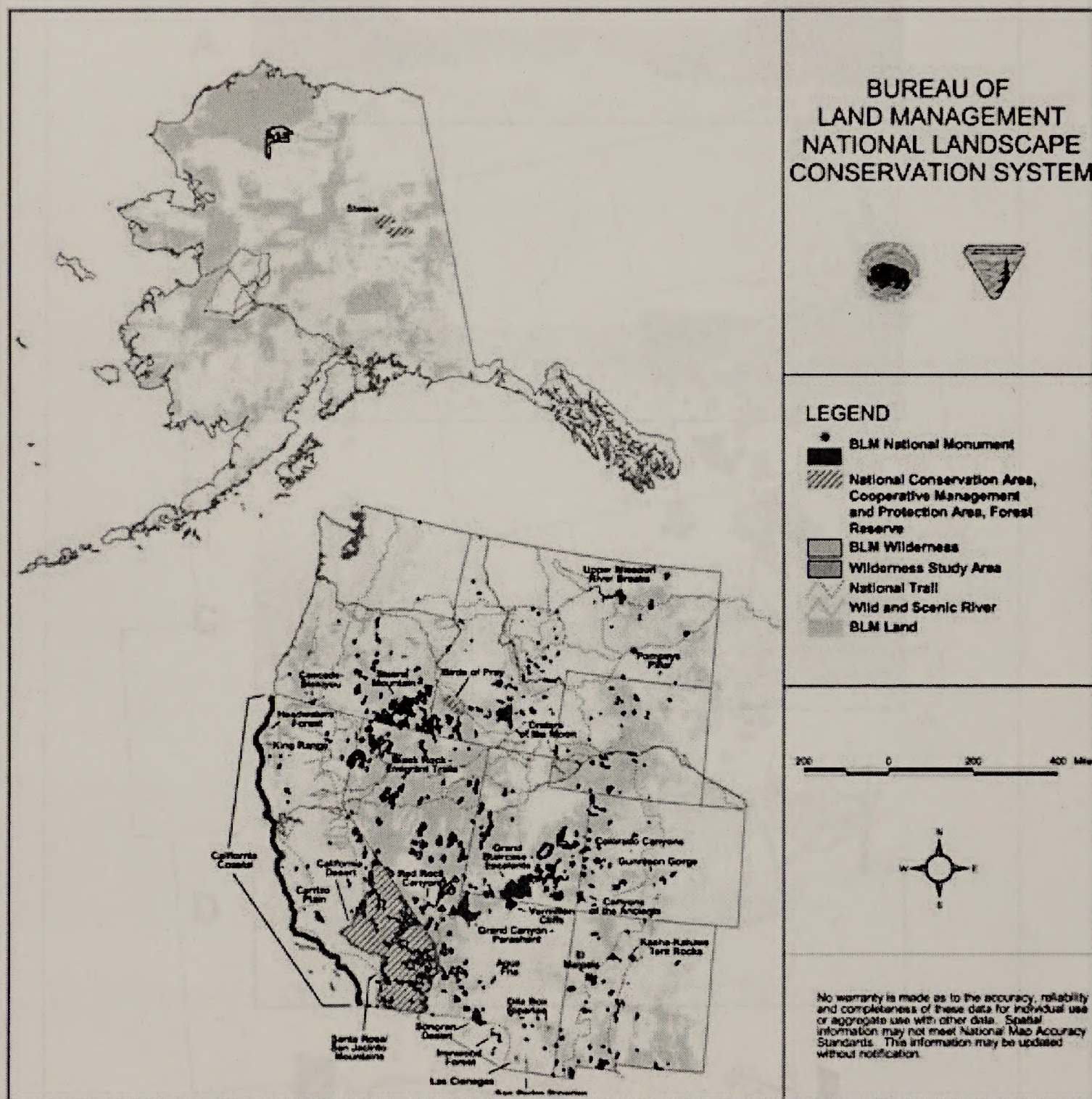


Figure 3.14.1 Bureau of Land Management National Landscape Conservation System.



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Draft EIS - Acronyms and Abbreviations

ACRONYMS AND ABBREVIATIONS

ACEC	— area of critical environmental concern
AML	— appropriate management level
AMP	— Allotment Management Plan
ANPR	— Advance Notice of Proposed Rulemaking
APA	— Administrative Procedure Act
ARC	— Association of Rangeland Consultants
ARPA	— Archaeological Resources Protection Act
AUM	— animal unit month
BA	— Biological Assessment
BCC	— Birds of Conservation Concern
BE	— Biological Evaluation
BLM	— Bureau of Land Management
BMP	— Best Management Practice
BOR	— Bureau of Reclamation
CBD	— Center for Biological Diversity
CCC	— consult, cooperate, and coordinate
CEQ	— Council of Environmental Quality
CFR	— Code of Federal Regulations
CO	— carbon monoxide
CWA	— Clean Water Act
DEIS	— Draft Environmental Impact Statement
EA	— Environmental Assessment
EIS	— Environmental Impact Statement
EPA	— Environmental Protection Agency
ESA	— Endangered Species Act
FLPMA	— Federal Land Policy and Management Act
FAR	— Functioning-at-Risk
Four C's	— Consultation, Cooperation, Communication, and Conservation
FWS	— U.S. Fish and Wildlife Service
GAO	— General Accounting Office
HMA	— Herd Management Area
IBLA	— Interior Board of Land Appeals
IC	— Idaho Code
IDFG	— Idaho Department of Fish and Game

IM—Instruction Memorandum
IMPLAN—Impact Analysis for Planning
NAAQS—National Ambient Air Quality Standard
NASDA—National Association of State Departments of Agriculture
NASS—National Agricultural Statistics Service
NCBA—National Cattlemen's Beef Association
NCRAC—Northwest California Resource Advisory Council
NEPA—National Environmental Policy Act
NFB—Nevada Farm Bureau
NHPA—National Historic Preservation Act
NLCS—National Landscape Conservation System
NOA—notice of availability
NOAA--National Oceanic and Atmospheric Administration
NOI—notice of intent
NOX—oxides of nitrogen
O3—Ozone
OHA—Office of Hearing and Appeals
OHV—Off Highway Vehicle
ONDA—Oregon Natural Desert Association
PFC—Proper Functioning Condition
PLC—Public Lands Council
PLF—Public Lands Foundation
PLS—Public Land Statistics
PM—particulate matter
PRIA—Public Rangelands Improvement Act
PSD—prevention of significant deterioration
RAC—Resource Advisory Council
RCA—Reserve Common Allotments
REIS—Regional Economic Information System
RNAs—Research Natural Areas
ROD—Record of Decision
S&G—Standards and Guidelines
SIP—State Implementation Plan
SRM—Society of Range Management
SOX—oxides of sulphur
SWL—Sustaining Working Landscapes

T&E—Threatened or Endangered

TGA—Taylor Grazing Act

TNC—The Nature Conservancy

TNR—temporary, nonrenewable

U.S.C.—United States Code

USFS—U.S. Forest Service

USFWS—U.S. Fish and Wildlife Service

WGFD—Wyoming Game and Fish Department

WSA—Wilderness Study Area

APPENDIX A HIGHLIGHTED STRIKE-AND-REPLACE VERSION OF REGULATION

Draft EIS - Appendix A

This appendix is intended as an aid to understanding the BLM Proposed Grazing Rule published in the Federal Register on December 8, 2003 (68 FR 65452-65457). The appendix is not an official publication of the Bureau of Land Management. The BLM believes it to be accurate; however, if there are differences between the images shown in this document and the regulatory text published in the Federal Register (68 FR 65452-65457), the Federal Register should be considered the correct version.

APPENDIX A

HIGHLIGHTED STRIKE-AND-REPLACE

VERSION OF REGULATIONS

This appendix is intended as an aid to understanding the BLM Proposed Grazing Rule published in the Federal Register on December 8, 2003 (RIN: 1004-AD42, 68 FR 68452). This appendix is not an official publication of the Bureau of Land Management. The BLM believes it to be accurate; however, if there are differences between the changes shown on this document and the regulatory text published in the Federal Register (see 68 FR 68468), the Federal Register should be considered the correct version.

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DOCUMENT IDENTIFICATION: This is a draft version of 43 CFR Part 4100 that shows, in strike-replace format, proposed changes to BLM grazing rules that were published in the Federal Register on December, 8, 2003. (68 FR 68452 - RIN: 1004-AD42). This document may not be relied upon for legal purposes.

43 CFR Public Lands: Interior
Subtitle B - [Regulations Relating to Public Lands
(Continued)]

CHAPTER II, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE
INTERIOR

SUBCHAPTER D -- RANGE MANAGEMENT (4000)

PART 4100 -- GRAZING ADMINISTRATION -- EXCLUSIVE OF ALASKA

Subpart 4100 -- Grazing Administration -- Exclusive of
Alaska; General

Sec.

4100.01	Purpose.
4100.02	Objectives.
4100.03	Authority.
4100.04	<u>[Reserved]</u>
4100.05	Definitions.
4100.06	<u>[Reserved]</u>
4100.07	Cross reference.
4100.08	Land use plans.
4100.09	Information collection.

Subpart 4110 -- Qualifications and Preference

4110.1	Mandatory qualifications.
4110.11	Acquired lands.
4110.2	Grazing preference.
4110.21	Base property.
4110.22	Specifying <u>permitted use grazing preference</u> .
4110.23	Transfer of grazing preference.
4110.24	Allotments.
4110.3	Changes in <u>permitted grazing preference active</u> use.
4110.31	Increasing <u>permitted active</u> use.

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- 4110.32 Decreasing ~~permitted~~ active use.
- 4110.33 Implementing reductions in ~~permitted~~ active use.
- 4110.4 Changes in public land acreage.
- 4110.41 Additional land acreage.
- 4110.42 Decrease in land acreage.
- 4110.5 Interest of Member of Congress.

Subpart 4120 -- Grazing Management

- 4120.1 [Reserved]
- 4120.2 Allotment management plans and resource activity plans.
- 4120.3 Range improvements.
- 4120.31 Conditions for range improvements.
- 4120.32 Cooperative range improvement agreements.
- 4120.33 Range improvement permits.
- 4120.34 Standards, design and stipulations.
- 4120.35 Assignment of range improvements.
- 4120.36 Removal and compensation for loss of range improvements.
- 4120.37 Contributions.
- 4120.38 Range improvement fund.
- 4120.39 Water rights for the purpose of livestock grazing on public lands.
- 4120.4 Special rules.
- 4120.5 Cooperation.
- 4120.51 Cooperation in management.
- 4120.52 Cooperation with State, county, and Federal agencies.

Subpart 4130 -- Authorizing Grazing Use

- 4130.1 Applications.
- 4130.11 Filing applications.
- 4130.12 Conflicting applications.
- 4130.2 Grazing permits or leases.
- 4130.3 Terms and conditions.
- 4130.31 Mandatory terms and conditions.
- 4130.32 Other terms and conditions.
- 4130.33 Modification of permits or leases.

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4130.4 ~~Approval~~ Authorization of temporary changes in grazing use within the terms and conditions of permits and leases.

4130.5 Free-use grazing permits.

4130.6 Other grazing authorizations.

4130.61 Exchange-of-use grazing agreements.

4130.62 Nonrenewable grazing permits and leases.

4130.63 Crossing permits.

4130.64 Special grazing permits or leases.

4130.7 Ownership and identification of livestock.

4130.8 Fees.

4130.81 Payment of fees.

4130.82 Refunds.

4130.83 Service charge.

4130.9 Pledge of permits or leases as security for loans.

Subpart 4140 -- Prohibited Acts

4140.1 Acts prohibited on public lands.

Subpart 4150 -- Unauthorized Grazing Use

4150.1 Violations.

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- 4170.1 Civil penalties.
- 4170.11 Penalty for violations.
- 4170.12 Failure to use.
- 4170.2 Penal provisions.
- 4170.21 Penal provisions under the Taylor Grazing Act.
- 4170.22 Penal provisions under the Federal Land Policy and Management Act.

Subpart 4180 -- Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

- 4180.1 Fundamentals of rangeland health.
- 4180.2 Standards and guidelines for grazing administration.

Subpart 4190.1 -- Effect of wildfire management decisions.

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

Source: 43 FR 29067, July 5, 1978, unless otherwise noted.

Subpart 4100 -- Grazing Administration --
Exclusive of Alaska; General

§4100.0-1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

§4100.0-2 Objectives.

(a) The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

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(b) These objectives will ~~shall~~ be realized in a manner ~~that is consistent~~ with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in ~~43 CFR part 1720, subpart 1725;~~ the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 170140) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)2).

§4100.0-3 Authority.

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 1181d);

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

The Act means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r).

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~~Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.~~ means that portion of the grazing preference that is:

- (1) Available for livestock grazing use under a permit or lease based on rangeland carrying capacity and resource conditions in an allotment; and
- (2) Not in suspension.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

Actual use report means a report of the actual livestock grazing use submitted by the permittee or lessee.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term "control" means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

Allotment means an area of land designated and managed for grazing of livestock.

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

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Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

Authorized officer means any person authorized by the Secretary to administer regulations in this part.

Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

Cancelled or cancellation means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

Class of livestock means ages and/or sex groups of a kind of livestock.

~~Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of (1) Protecting the land and its resources from destruction or unnecessary injury; (2) Improving rangeland conditions; or (3) Enhancing resource values, uses, or functions.~~

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

Control means being responsible for and providing care and management of base property and/or livestock.

District means the specific area of public lands administered by a District Manager.

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Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

Grazing district means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

Grazing fee year means the year, used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year.

Grazing lease means a document that authorizes grazing use of the public lands under section 15 of the Act. ~~outside an established grazing district. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease. all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.~~

Grazing permit means a document that authorizes grazing use of the public lands under section 3 of the Act. ~~within an established grazing district. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit. all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.~~

Grazing preference or preference means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

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Interested public means an individual, group or organization that has:

(1) (i) ~~Submitted~~ a written request to BLM the authorized officer to be provided an opportunity to be involved in the decisionmaking process leading to a BLM decision for for the management of livestock grazing public lands, and

(ii) Followed up on that request by commenting on or otherwise participating in the decisionmaking process as to the management of a specific allotment if there has been an opportunity for such participation; or,

on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et seq.) and establish management direction for resource uses of public lands.

Livestock or kind of livestock means species of domestic livestock -- cattle, sheep, horses, burros, and goats.

Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

Monitoring means the periodic observation and orderly collection of data to evaluate: (1) Effects of management actions; and (2) Effectiveness of actions in meeting management objectives.

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Preference means grazing preference (see definition of "grazing preference").

~~Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.~~

Public lands means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

Rangeland studies means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

Secretary means the Secretary of the Interior or his authorized officer.

Service area means the area that can be properly grazed by livestock watering at a certain water.

State Director means the State Director, Bureau of Land Management, or his or her authorized representative.

Supplemental feed means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.

Suspension means the ~~temporary~~ withholding from active use, through a decision issued by the authorized officer or by

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agreement, of part or all of the ~~permitted use~~ grazing preference specified in a grazing permit or lease.

Temporary nonuse means that portion of active use that the authorized officer authorizes not to be ~~not used~~ the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to an application made by request of the permittee or lessee.

Trend means the direction of change over time, either toward or away from desired management objectives.

Unauthorized leasing and subleasing means --

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

§4100.0-7 Cross reference.

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The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

§4100.0-8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

§4100.0-9 Information collection.

~~(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004-0005, 1004-0019, 1004-0020, 1004-0041, 1004-0047, 1004-0051, and 1004-0068. The information would be collected to permit enable the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes. should be approved. Response is required to obtain a benefit.~~

~~(b) Public reporting burden for the information collections are as follows: Clearance number 1004-0005 is estimated to average 0.33 hours per response, clearance number 1004-0019 is estimated to average 0.33 hours per response, clearance number 1004-0020 is estimated to average 0.33 hours per response, clearance number 1004-0041 is estimated to average 0.25 hours per response, clearance number 1004-0047 is estimated to average 0.25 hours per response, clearance number 1004-0051 is estimated to average 0.3 hours per~~

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~~response, and clearance number 1004-0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0005, 0019, 0020, 0041, 0047, 0051, or 0068, Washington, DC 20503.~~

Subpart 4110 -- Qualifications and Preference

§4110.1 Mandatory qualifications.

(a) Except as provided under §§4110.1-1, 4130.5, and 4130.6-3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

(1) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(2) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(3) A corporation authorized to conduct business in the State in which the grazing use is sought.

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under §4130.1-1(b).

~~(1) Renewal of permit or lease. (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of~~

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~~performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.~~

~~(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.~~

~~(2) New permit or lease. Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when~~

~~(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or~~

~~(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or~~

~~(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.~~

(dc) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

§4110.1-1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land

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Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of §4110.1.

§4110.2 Grazing preference.

§4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see §4100.0-5) if:

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple use management objective of the public lands.

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section.

(d) A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range

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improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(de) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2-3, to the new owner or person in control of that base property.

(f) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

§4110.2-2 Specifying permitted use grazing preference.

(a) ~~Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. All grazing permits and leases will specify~~ Grazing preference, shall will be specified in all grazing permits or and grazing leases except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted use Preference shall includes active use and encompass all authorized use including livestock use, any suspended use, and ~~conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is~~

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~~authorized based upon forage availability, or designated annual rangelands, Permitted livestock~~Active use shall be ~~is~~ based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under §4110.3-3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The ~~permitted use grazing preference specified shall~~ is attached to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of ~~permitted use grazing~~ preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

§4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all qualifications and requirements of §§4110.1, 4110.2-1, and 4110.2-2.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under §4120.3 and maintained in conjunction with the transferred preference (see §4120.3-5). The terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see §4130.2) with such modifications as he may request which

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are approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with ~~the authorized officer~~ BLM a properly executed transfer application showing the base property and the grazing preference amount of permitted use being transferred in animal unit months.

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions

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of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

(g) Failure of either the transferee or the transferor to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

§4110.2-4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, and the State having lands or responsibility for managing resources within the area, ~~and the interested public,~~ the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

§4110.3 Changes in permitted use grazing preference status.

(a) The authorized officer ~~shall~~ will periodically review the permitted use grazing preference specified in a grazing permit or lease and ~~shall make changes in the grazing preference status permitted use~~ as needed to:

(1) ~~m~~ Manage, maintain or improve rangeland productivity;

~~to~~

(2) ~~a~~ Assist in restoring ecosystems to properly functioning conditions;

~~to~~ (3) ~~e~~ Conform with land use plans or activity plans; ~~or~~

~~to~~

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(4) eComply with the provisions of subpart 4180.~~of this part.~~

(b) The authorized officer will support Tthese changes by monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer.

(c) Before changing grazing preference status, the authorized officer will document compliance with NEPA. Before changing grazing preference, the authorized officer will undertake the appropriate analysis review the grazing preference as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The authorized officer will analyze and, if appropriate, documentation will the include consideration of any impacts of the proposed change on relevant social, economic, and cultural effects of the proposed action.factors.

§4110.3-1 Increasing permitted active use.

BLMAAdditional forage may be apportion additional forageed to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) Additional forage temporarily available. When the authorized officer determines that additional livestock forage is temporarily available, he may authorize its use on a for livestock grazing use may be apportioned on a nonrenewable basis in the following ordermanner:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to the amount of their active use; and

(2) To other qualified applicants under § 4130.1-2.

(b) Additional forage available on a sustained yield basis. When the authorized officer determines that additional for livestock forage is available on a sustained yield basis, he will apportion it in the following manner: grazing use shall first be apportioned in satisfaction of suspended

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~~permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available~~

(1) First, to remove all or a part of the suspension of preference of permittees or lessees with permits or leases in the allotment where the forage is available; and

(e2) Second, if additional forage remains after ending all suspensions, the authorized officer will After consultation, cooperation, and coordination with the affected permittees or lessees, and the State having lands or responsibility for managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be and apportioned it in the following priority order:

(1i) Permittees or lessees in proportion to their contribution or to stewardship efforts which result in increased forage production;

(2ii) Permittee(s) or lessee(s) in proportion to the amount of their permitted use grazing preference; and

(3iii) Other qualified applicants under §4130.1-2 of this title.

§4110.3-2 Decreasing ~~permitted~~ active use.

(a) The authorized officer may suspend Active use may be suspended in whole or in part on a temporary basis due (1) To drought, fire, or other natural causes reasons specified in § 4110.3-3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as

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determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer ~~shall~~ will reduce ~~permitted grazing active use,~~ or otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

§4110.3-3 Implementing ~~reductions~~ changes in permitted active use.

(a) (1) After consultation, cooperation, and coordination with the affected permittee or lessee, and the State having lands or managing resources within the area, and the interested public, reductions of permitted the authorized officer will implement changes in active use shall will be implemented through a documented agreement or by decision. of the authorized officer. The authorized officer will implement cChanges in active use in excess of 10 percent shall be implemented over a 5-year period unless:

(i) Aafter consultation with the affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years; or

(ii) Unless Tthe changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing §4110.3-2 will shall be issued as proposed decisions pursuant to §4160.1, except as provided in paragraph (b) of this section.

(b) (b) (1) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, Aafter consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsibility for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of

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paragraph (a) of this section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation; or

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) —Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay is granted by the Office of Hearings and Appeals in accordance with § 43 CFR 4.21 of this title.

§4110.4 Changes in public land acreage.

§4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under §4130.1-2 of this title.

§4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

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(2) ~~Permitted use~~ Grazing preference may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see §4120.3-6).

§4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

Subpart 4120 -- Grazing Management

§4120.1 [Reserved]

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§4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall --

(1) Include terms and conditions under §§4130.3, 4130.3-1, 4130.3-2 4130.3-3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

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(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis shall be issued in accordance with ~~considered the proposed decision for the purposes of subpart § 4160.1. of this part.~~

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

§4120.3 Range improvements.

§4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

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(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3-2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). ~~Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis shall be issued in accordance with considered the proposed decision under subpart § 4160.1. of this part.~~

§4120.3-2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, cooperators and the United States share title to permanent structural range improvements such as fences, wells, and pipelines where authorization is granted after [Insert date 60 days after publication in the FEDERAL REGISTER] August 21, 1995 shall be in the name of the United States in proportion to their

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contribution to on-the-ground project development and construction costs. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. The authorized officer BLM will document Aa permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3-5 and 4120.3-6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

§4120.3-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse ~~or conservation use~~ has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of

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forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination regarding the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized range improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

§4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§4120.3-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under §4110.2-3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

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§4120.3-6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under §4120.3-4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

§4120.3-7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

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§4120.3-8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which the Bureau of Land Management is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

§4120.3-9 Water rights for the purpose of livestock grazing on public lands.

Any right ~~acquired by~~ the United States ~~acquires on or~~ after August 21, 1995 to use water on public land for the purpose of livestock watering on public land will ~~shall~~ be acquired, perfected, maintained, and administered under the substantive and procedural laws of the State within which such land is located. ~~To the extent allowed by the law of~~

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~~the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.~~

§4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the FEDERAL REGISTER as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

§4120.5 Cooperation.

§4120.5-1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

§4120.5-2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The

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authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including --

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); ~~and~~

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management; and.

(c) State, local, or county--established grazing boards in reviewing range improvements and allotment management plans on public lands.

Subpart 4130 -- Authorizing Grazing Use

§4130.1 Applications.

§4130.1-1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether aApplicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. The authorized officer will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance.

(1)

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~~(1)~~ Renewal of permit or lease.

(i) The authorized officer will deem ~~T~~the applicant for renewal of a grazing permit or lease, and any affiliate, ~~shall be deemed to~~ have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) New permit or lease. The authorized officer will deem applicants for new permits or leases, and any affiliates, to have a record of satisfactory performance when --

(i) The applicant or affiliate has not had any Federal grazing permit or lease cancelled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; ~~and~~

(ii) The applicant or affiliate has not had any ~~s~~State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; ~~and~~

(iii) ~~The applicant or affiliate is not barred from holding a Federal grazing permit or lease by order of~~ a court of competent jurisdiction does not bar the applicant or affiliate from holding a Federal grazing permit or lease.

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(c) In determining whether affiliation exists, the authorized officer will~~shall~~ consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

§4130.1-2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of §4110.3-1 of this title or on the basis of any of the following factors:

- (a) Historical use of the public lands (see §4130.2(e));
- (b) Proper use of rangeland resources;
- (c) General needs of the applicant's livestock operations;
- (d) Public ingress or egress across privately owned or controlled land to public lands;
- (e) Topography;
- (f) Other land use requirements unique to the situation.
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and
- (h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

§4130.2 Grazing permits ~~or~~ and leases.

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(a) Grazing permits or leases ~~shall be issued to qualified applicants to authorize use on the public lands and other BLM-administered lands under the administration of the Bureau of Land Management that are designated in land use plans as available for livestock grazing through land use plans.~~ Permits ~~or~~ and leases ~~shall~~ will specify the grazing preference, including ~~livestock grazing,~~ active and suspended use, ~~and conservation use.~~ These grazing permits and leases ~~shall~~ will also specify terms and conditions pursuant to §§4130.3, 4130.3-1, and 4130.3-2.

(b) The authorized officer ~~shall~~ will consult, cooperate, and coordinate with affected permittees or lessees, and the State having lands or responsibility ~~for managing resources within the area, and the interested public prior to the before~~ issuing and ~~or renewing~~ of grazing permits and leases.

(c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless --

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

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(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease; and

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

~~(f) A permit or lease is not valid unless both the BLM and the permittee or and lessee and BLM have signed it. The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.~~

~~(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, allotment management plan or other activity plans and the provisions of subpart 4180 of this part.~~

~~(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed use will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or~~

~~(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.~~

~~(h) Application for nonrenewable grazing permits and leases under §§4110.3 1 and 4130.6 2 for areas for which conservation use has been authorized will not be approved.~~

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~~Forage made available as a result of temporary nonuse may be made available to qualified applicants under §4130.6-2.~~

(~~i~~g) Permits or leases may incorporate the percentage of public land livestock use (see §4130.3-2(g)) or may include private land offered under exchange-of-use grazing agreements (see §4130.6-1).

(~~j~~h) Provisions explaining how grazing permits or authorizations may be granted for grazing use on state, county or private land leased by the Bureau of Land Management under "The Pierce Act" and located within grazing districts are explained in 43 CFR part 4600.

§4130.3 Terms and conditions.

(a) Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160 unless:

(1) The terms and conditions of the permit or lease, such as terms and conditions mandated by a biological opinion prepared under the Endangered Species Act, are not subject to review by the Office of Hearings and Appeals; or

(2) The offer of permit or lease responds to an application for a permit or lease for grazing use on additional land acreage (see § 4110.4-1).

(c) If any of the terms and conditions of a BLM-offered permit or lease are stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4.

§4130.3-1 Mandatory terms and conditions:

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s)

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to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§4130.3-2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

- (a) The class of livestock that will graze on an allotment;
- (b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;
- (c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;
- (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;
- (e) The kinds of indigenous animals authorized to graze under specific terms and conditions;
- (f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of

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plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee; and.

~~(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.~~

§4130.3-3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees, and the State having lands or responsibility for managing resources within the area, ~~and the interested public,~~ the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not are not meeting management objectives specified in:

(i) ~~the~~ The land use plan;

(ii) The pertinent ~~aa~~Allotment management plan or other activity plan; or, ~~or management objectives~~

(iii) An applicable decision issued under § 4160.3; or

(2) ~~is~~Do not in conformance with to the provisions of subpart 4180. ~~of this part.~~

(b) To the extent practical, during the preparation of biological assessments or biological evaluations prepared

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under the Endangered Species Act, and other reports that evaluate monitoring and other data, that the authorized officer uses as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease, the authorized officer will~~shall~~ provide review opportunity and opportunity to provide input to:

(1) affected permittees or lessees;

(2) States having lands or responsibility for managing resources within the affected area; and,

(3) ~~the interested public. an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.~~

§4130.4 ~~Approval~~ Authorization of temporary changes in grazing use within the terms and conditions of permits and leases.

(a) (1) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease to:

(i) Respond to annual fluctuations in timing and amount of forage production; or

(ii) Meet locally established range readiness criteria.

(2) The authorized officer will consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

(b) For the purposes of this subpart, "within the terms and conditions of the permit or lease" means temporary changes to livestock number, period of use, or both, that would result in grazing use that:

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(1) Results in forage removal that does not exceed the amount of active use specified in the permit or lease; and

(2) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease.

~~(c) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer. Permittees and lessees must apply if they wish --~~

(1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (d) of this section;

(2) To activate forage in temporary nonuse; or,
~~or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the~~

(3) To use of forage that is temporarily available on designated ephemeral or annual ranges.

(d) (1) Temporary nonuse is authorized:

(i) Only if the authorized officer approves it in advance; and

(ii) For no longer than one year at a time.

(2) Permittees or lessees applying for temporary nonuse must state on their application the reasons supporting nonuse. The authorized officer will authorize nonuse to provide for:

(i) Natural resource conservation, enhancement or protection, including more rapid progress toward resource condition objectives or attainment of rangeland health standards; or

(ii) The business or personal needs of the permittee or lessee.

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(e) Under §4130.6-2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described at paragraph (d)(2)(ii) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (d)(2)(i) of this section.

(af) Applications ~~Permittees or lessees who wish to apply for temporary changes in grazing use within the terms and conditions of their permit or lease should be filed an application with the authorized officer BLM. before the billing notices for the affected grazing use have been issued~~ The authorized officer will assess a service charge under § 4130.8-3 to process Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which that require the issuance of a replacement or supplemental billing notice. shall be subject to a service charge under §4130.8-3 of this title.

§4130.5 Free-use grazing permits.

(a) A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to §4130.1-2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

(b) The authorized officer may also authorize free use under the following circumstances:

(1) ~~The primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;~~

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(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

§4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

§4130.6-1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under §4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock carrying capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

§4130.6-2 Nonrenewable grazing permits and leases.

Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with

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existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, and the State having lands or responsibility for managing resources within the area, ~~and the interested public~~ prior to the issuance of nonrenewable grazing permits and leases.

§4130.6-3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

§4130.6-4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

§4130.7 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, health and sanitation.

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized

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livestock in order to promote the orderly administration of the public lands.

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed

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authorized livestock use and is consistent with other terms and conditions of the permit or lease.

§4130.8 Fees.

§4130.8-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

\$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI = Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by \$3.65 and multiplied by 100;

BCPI = Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October

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(computed by the National Agricultural Statistics Service divided by \$22.04 per hundred weight and multiplied by 100; and

PPI = Prices Paid Index means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than \$1.35 per animal unit month.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) Except as provided in §4130.5, the full fee shall be charged for each animal unit month of ~~authorized~~ grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats:

(1) ~~Over~~ the age of 6 months at the time of entering the public lands or other lands administered by the Bureau of Land Management; ~~by~~

(2) ~~any such w~~ Weaned animals regardless of age; or, ~~by~~

(3) ~~such animals that will b~~ Becoming 12 months of age during the authorized period of use.

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~~(d) No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management. BLM will not charge grazing fees for animals that are less than 6 months of age at the time of entering BLM-administered lands, provided that they are the natural progeny of animals upon which fees are paid, provided and they will not become 12 months of age during the authorized period of use, nor for progeny born during that period.~~

(e) In calculating the billing, the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

~~(df)~~ A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in §4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service.

(eg) Fees are due on due date specified on the grazing fee bill. Payment will be made prior to grazing use. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. If allotment management plans provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

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(~~f~~h) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days may be a violation of §4140.1(b)(1) and wishall result in action by the authorized officer under §§4150.1 and subpart 4160.1-2.

§4130.8-2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

§4130.8-3 Service charge.

~~A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to (a) Under sSection 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), calculation of the Bureau service charge BLM assesses d shallwill reflect processing costs. and shall be BLM will adjusted the charge periodically as costs change, and will inform the public of the. Notice of changes shall be by publishing ed a notice periodically in the FEDERAL REGISTER.~~

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(b) Except when BLM initiates the action, the authorized officer ~~BLM~~ will assess a service charge for each of the following actions as shown on the table below--

Action	Service Charge
Issue crossing permit	\$75
Transfer grazing preference	\$145
Cancel and/or replace a grazing fee billing	\$50

§4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, Provided, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

Subpart 4140 -- Prohibited Acts

§4140.1 Acts prohibited on public lands.

~~The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:~~

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:

(1) Violating special terms and conditions incorporated in permits or leases;

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years. 7 ~~but~~ This does not

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include ing approved temporary nonuse, ~~conservation use~~, or use temporarily suspended by the authorized officer;

(3) Placing supplemental feed on these lands without authorization, or contrary to the terms and conditions of the permit or lease;

(4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;

(5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer;

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts on BLM-administered lands ~~related to rangelands shall be~~ are subject to civil and criminal penalties set forth at §§4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:

(i) Without a permit or lease or other grazing use authorization (see § 4130.6) and timely payment of grazing fees; ~~and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.~~

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under §4130.7(c) of this title.

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(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

(6) Littering;

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) (1) A grazing permittee or lessee performing any
Performance of the prohibited acts listed in paragraphs
(c) (1), (c) (2) or (c) (3) of this section on an allotment
where he is authorized to graze under a BLM permit or lease

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may be subject to the civil penalties set forth at §4170.1-1, if:

~~where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and~~

(i) The permittee or lessee performs the prohibited act while engaged in activities related to grazing use authorized by his permit or lease;

(ii) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations; and

(iii) No further appeals are outstanding.
~~constitutes a prohibited act that may be subject to the civil penalties set forth at §4170.1-1.~~

(21) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources.

(32) (i) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 et seq.), Endangered Species Act (16 U.S.C. 1531 et seq.), or any provision of part 4700 of this

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chapter concerning the protection and management of wild free-roaming horses and burros; or

(~~ii~~3) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150 -- Unauthorized Grazing Use

§4150.1 Violations.

Violation of §4140.1(b)(1) constitutes unauthorized grazing use.

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

(b) Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts.

§4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under §4150.3.

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(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

(c) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under §4150.4.

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

§4150.3 Settlement.

Where violations are repeated willful, the authorized officer shall take action under §4170.1-1(b) of this title. The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

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(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) The public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

(b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.

(d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under subpart §4160-1 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.

(f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part pending resolution of any appeal.

§4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under §4150.2 may be impounded and disposed of by the authorized officer as provided herein.

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§4150.4-1 Notice of intent to impound.

(a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.

(b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

§4150.4-2 Impoundment.

After 5 days from delivery of the notice under §4150.4-1(a) of this title or any time after 5 days from publishing and posting the notice under §4150.4-1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

§4150.4-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

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§4150.4-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under §4150.3 or adequate showing that there has been no violation.

§4150.4-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law.

Subpart 4160 -- Administrative Remedies

§4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state

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the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d).

(d) A biological assessment or biological evaluation prepared for purposes of Endangered Species Act consultation or conference is not a ~~proposed~~ decision for purposes of protest or appeal.

§4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

~~(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this~~

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~~section. See §§4.21 and 4.470 of this title for general provisions of the appeal and stay processes. (d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under §4110.3-1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.~~

~~(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.~~

~~(f)c) Notwithstanding the provisions of §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision, and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, or the Interior Board of Land Appeals, or an administrative law judge to place provide that the decisions in full force and effect becomes effective immediately as provided in §4.21(a)(1) of this title.~~

§4160.4 Appeals.

(a) Those who wish to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in §4.470 et seq. of this title. The appeal or petition for stay must be filed with the BLM office that issued the

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decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in §4160.3(a).

~~Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in §4.470 of this title. As stated in that part, the appeal must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in §4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.~~ (b) When OHA stays implementation of a decision described in paragraph (b)(1) or (b)(2) of this section, the immediately preceding authorization and any terms and conditions therein will not expire, and the permittee, lessee, or preference applicant may continue to graze under the immediately preceding grazing authorization, subject to any relevant provisions of the stay order and to §4130.3(b), and except as provided in paragraph (c) of this section. This paragraph applies to decisions that:

(1) Change the terms and conditions of a permit or lease during its current term; or

(2) Offer a permit or lease to a preference transferee with terms and conditions that are different from the permit or lease terms and conditions that are most recently applicable to the allotment or portion of the allotment in question; or

(3) Renew a permit or lease with changed terms and conditions.

(c) When OHA stays implementation of a decision described in paragraphs (c)(1) through (c)(4) of this section, the authorized officer, notwithstanding paragraph (b) of this section, will authorize grazing consistent with its final decision when the decision:

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(1) Modifies a permit or lease because of a decrease in public land acreage available for grazing (see §4110.4-2);

(2) Affects an application for grazing use of BLM-designated ephemeral or annual rangeland;

(3) Affects an application for additional forage temporarily available under §4110.3-1(a); or,

(4) Affects an application for a grazing permit or lease that is not made in conjunction with a preference transfer application (see §4110.2-3(d)).

Subpart 4170 -- Penalties

§4170.1 Civil penalties.

§4170.1-1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of §4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates §4140.1(b) of this title and has not made satisfactory settlement under §4150.3 of this title the authorized officer shall refer the matter to proper authorities for

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appropriate legal action by the United States against the violator.

(d) Any person found to have violated the provisions of §4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

§4170.1-2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of ~~permitted~~ active use the permittee or lessee has failed to use.

§4170.2 Penal provisions.

§4170.2-1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under §4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than \$500.

§4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

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Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), any person who knowingly and willfully commits an act prohibited under §4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

Subpart 4180 -- Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§4180.1 Fundamentals of rangeland health.

Where standards and guidelines have not been established under §4180.2(b), and the authorized officer determines that grazing management needs to be modified to assist in achieving the following conditions, the authorized officer will take appropriate action as soon as practicable but not later than the start of the grazing year that follows BLM's completion of relevant and applicable requirements of law and regulations, and the consultation requirements of §§ 4110.3-3 and 4130.3-3:

~~The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.~~

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there

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is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered ~~species~~, Federal pFederal Proposed, or candidate threatened and endangered species Category 1 and 2 Federal candidate and other at-risk and special status species.

§4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the

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Bureau of Land Management State Director must provide for conformance with the fundamentals of §4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

~~(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon~~ (1) If the authorized officer determines ingthrough standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section-, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose and analyze appropriate action to address the failure to meet standards or to conform to the guidelines not later than 24 months after the determination. The requirements of this paragraph are met when the parties execute an applicable and relevant documented agreement or the authorized officer issues an applicable final decision under §4160.3.

(2) Upon executing the agreement or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action(s) as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraphs (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases

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and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

- (1) Watershed function;
- (2) Nutrient cycling and energy flow;
- (3) Water quality;

(4) Habitat for endangered, threatened, proposed, candidate ~~Candidate 1 or 2~~, or other at-risk or special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;

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(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;

(7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;

(8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal ~~Proposed, Category 1 and 2~~ Federal candidate, and other at-risk or special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) Emphasizing native species in the support of ecological function; and

(12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

~~(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and u~~Until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section will~~shall~~ apply and will be implemented in accordance with paragraph (c) of this section. ~~However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February~~

DISCLAIMER: This document is intended as an aid to understanding the BLM Proposed Grazing Rule published in the FEDERAL REGISTER on December 8, 2003 (RIN: 1004-AD42, 68 FR 68452). This document is not an official publication of the Bureau of Land Management. We believe it to be accurate, however, if there are differences between the changes shown on this document and the regulatory text published in the FEDERAL REGISTER (see 68 FR 68468) the FEDERAL REGISTER is correct.

~~12, 1997, fallback standards and guidelines implementation date, not to exceed the 6 month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long term rangeland health and administrative efficiencies.~~

(1) Fallback standards.

(i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) Fallback guidelines.

(i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

(iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;

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(v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, ~~Proposed, candidate Category 1 and 2~~ candidate, and other at-risk or special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

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(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

APPENDIX B

Draft EIS - Appendix B

SPECIAL STATUS SPECIES

This appendix, BLM's most current list of special status species in the western States, includes species listed under the Endangered Species Act (ESA) as endangered, threatened, candidate, and proposed, as well as BLM sensitive species. Because of the length of the list, rather than print it with this D/EIS, an online link located at <http://www.blm.gov/planning/library/GrazingEIS/SSS.htm> can be viewed or by call Molly Brady at 302-249-7774 for a hardcopy.

While this list is BLM's most up-to-date list of special status species, the list may change at any time according to changes in the listing by the Fish and Wildlife Service, new survey data from recent investigations, and further verification of a species' presence on public lands.

APPENDIX B

SPECIAL STATUS SPECIES

This appendix, BLM's most current list of special status species in the western States, includes species listed under the Endangered Species Act (ESA) as endangered, threatened, candidate, and proposed, as well as BLM-sensitive species. Because of the length of the list, rather than print it with this DEIS, an online link located at <http://www.blm.gov/planning/library/GrazingEIS/SSS.htm> can be viewed or by call Molly Brady at 202-245-7714 for a hardcopy.

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Draft EIS - Appendix C

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APPENDIX C

SUMMARY OF SCOPING COMMENTS

As of July 2003, the Bureau of Land Management (BLM) received more than 8,300 comments in response to the Advanced Notice of Proposed Rulemaking and the Notice of Intent. Most of the 8,300 comments were form letters expressing opposition to the BLM making any changes to the existing regulations that were passed in 1995. We received approximately three dozen letters containing substantive comments from interest groups and State and Federal agencies. In many instances, the comments submitted by individuals and interest groups duplicated the comments of "like-minded" organizations. Some commenters referenced the previous changes to the grazing regulations as either the "1994" or "1995" regulatory changes. They are the same.

The BLM held four public scoping meetings during March 2003. Approximately 60 people attended the Billings, Montana, meeting and 25 people offered testimony. Around 150 people attended the Reno, Nevada, meeting and 25 offered testimony. Approximately 50 people attended the Albuquerque, New Mexico, meeting, with 35 individuals providing testimony, and approximately 30 people attended the Washington, D.C., meetings, where five persons gave testimony.

The topics, in order of the number of comments received, are listed as follows:

1. Authorizing temporarily locked gates on public lands.
2. Establishing Reserve Common Allotments.
3. Sharing proportional title to range improvements.
4. Considering the social, economic, and cultural factors in NEPA analysis.
5. Acquisition of water rights.
6. Extending authorized temporary nonuse from 3 to 5 years.
7. Eliminating certain nonpermit violations.
8. Modifying the appeal process.
9. Considering adding a fee schedule for certain administrative actions.
10. Clarify what actions BLM will take if we determine rangeland health standards are not being met.

1.0 Definitions

1.1 General comments regarding definitions

The Nevada Department of Agriculture commented at the Reno public scoping meetings that BLM should not change its present definitions and should maintain the interpretations as close to the original meanings as they are in the Taylor Grazing Act.

The State of Arizona Game and Fish Department asked why BLM proposed changing the definitions in the regulations. The department said they found BLM's intent in making these regulatory changes unclear; however, it supported revisions and clarifications that would effectively and efficiently accomplished the goal of attaining healthy rangelands and support multiple use of public lands including, benefits to fish and wildlife resources.

The Defenders of Wildlife, Friends of the Earth, National Wildlife Federation, and National Resources Defense Council asked why the Department believes it is necessary to change any of the definitions that weren't changed in 1995.

1.2 Section 4100.0-5 Definitions

1.2.1 Active use

A consortium of environmental and conservation groups (Defenders of Wildlife, Friends of the Earth, National Wildlife Federation, and National Resources Defense Council) jointly commented that the term "conservation use" could have been removed administratively without the expense of a rulemaking effort. The group commented that it could not identify other necessary or warranted changes to this definition because BLM was too vague about its intentions. Several commenters asked BLM not to revoke conservation use permits.

1.2.2 Authorized use

The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) asked the BLM to provide for the maximum amount of flexibility when considering the terms "nonuse," and "reduced use" in our definition of "authorized use." It asked BLM to allow nonuse for 3 years for reasons other than resource management. After 3 years the group wants BLM to consult with the preference holder to determine how Federal AUMs could be made available to qualified applicants who are engaged in the livestock business. It commented that BLM should do this by issuing either a temporary permit or a reallocation under the criteria in the regulations. It also asked BLM to clarify whether Federal AUMs in nonuse should be made available for active use after 3 years.

The consortium of environmental and conservation groups asked why BLM is proposing to change this definition if it was not considered in the 1995 rulemaking. The groups commented that "Adopting the claims advanced in the PLC case is inappropriate, illegal, and limits BLM's ability to adjust livestock numbers and use for the benefit and protection of other users' uses or resources of the public lands in accordance with the goals and mandates of FLPMA and PRIA."

1.2.3 Base property

The consortium of environmental and conservation groups said the Department of Interior already addressed these issues in the 1994 regulations and it asked why BLM believes they must be changed now.

1.2.4 Grazing lease

The consortium of environmental and conservation groups commented that the existing definition is taken from the TGA and should not be changed. It commented that it is inappropriate to link this definition to a particular number of livestock and the BLM should link numbers to preference because this process can identify and reveal real obstacles to improved management and improved conditions.

1.2.5 Grazing permit

The consortium of environmental and conservation groups commented that BLM addressed this and other definitions during the 1995 Range Reform efforts and it asked how BLM justifies changing them now, so soon after that effort.

1.2.6 Grazing Preference or Preference

The NCBA and the PLC asked the BLM to replace the term "permitted use" with the term "preference" wherever it occurs in the existing regulations because the term "preference," as used in the Taylor Grazing Act (TGA), was intended by Congress to provide a preference level of Federal AUMs of livestock forage to ranchers who qualified for grazing permits and leases.

The NCBA and the PLC also commented that the term "preference" means the sum total of active-use AUMs and any suspended nonuse AUMs. They asked if BLM is considering this term in this context. They asked if BLM intended to continue recognizing that permittees and lessees have an incentive to improve livestock management practices, and to improve rangeland conditions where possible by reactivating part or all of their suspended nonuse.

The consortium of environmental and conservation groups commented that the term "preference" is taken directly from the Taylor Grazing Act and that BLM should not change it. It commented that the definition should not be linked to a particular number of livestock because it interferes with BLM's ability to manage public lands pursuant to PRIA and FLPMA. It further commented that "permitted use" is properly determined by a land use plan and should remain as an indicator of livestock numbers allowed on a particular allotment.

1.2.7 Monitoring

General comments: The BLM received few comments pertaining to the definition. However, it received many comments advising BLM how to conduct monitoring and what the results of these monitoring efforts should be. The livestock industry generally believes that more thorough monitoring will benefit the industry and vindicate them from allegations that livestock grazing is responsible for degrading public lands. The environmental and conservation communities urge increased monitoring because they believe monitoring will

support their long-held belief that livestock grazing is degrading public lands.

The consortium of environmental and conservation groups alleges that after 1995, BLM changed the way it monitors resource damage on public lands because BLM did not have the budget or resources to carry out required monitoring. The groups commented that this caused BLM to delay remedial actions resulting in additional damage to public lands, and indefinitely stalled true environmental range improvements. It also commented that BLM's return to the pre-1995 policy of "no data, no action" will block needed improvements and would be completely inconsistent with true stewardship.

The Public Lands Council and the National Cattlemen's Beef Association commented that data collection must be consistent and that BLM should prepare an annual report on monitoring activities and make that information available.

The Oregon Natural Desert Association commented that monitoring is vital to BLM's success in land management actions. It commented that the definition of "monitoring" should recognize the importance of—and require the collection of—measurable, repeatable, quantitative information. It said BLM relies on "drive-by" narratives, not by applying professional scientific procedures and standards.

The Nevada Department of Agriculture commented at the Reno public scoping meeting that the BLM must clarify how it will monitor results of trend studies and how that information will be used to increase AUMS on a particular allotment.

The New Mexico Public Lands Council commented at the Albuquerque public scoping meeting that vegetation monitoring will ensure that long-term range conditions and trends are stable or improving, enhance the resource for future generations, provide positive economic returns, and stabilize the range livestock industry and the culture of the vital human resources of New Mexico.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it recognizes the importance of long-term monitoring when it supports the grazing program and establishes sustainability. It urged BLM to consider data from a study pertaining to monitoring in preparation by the National Cattlemen's Beef Association and the Public Lands Council; however, it gave no other details or specifics of that study.

1.2.8 Reserve Common Allotments

BLM did not receive any comments pertaining to a definition of Reserve Common Allotments.

See Section 4.1 for discussions of Reserve Common Allotments.

2.0 Changing the regulations to clarify present requirements and to allow better rangeland management and permit administration

We are considering the following changes:

2.1 Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans

The Public Lands Council (PLC) and the National Cattlemen's Beef Association (NCBA) generally supported the BLM's proposed changes and provided extensive and substantial comments pertaining to all aspects of the BLM's proposed criteria. In addition, it submitted several additional provisions it wants the BLM to address in this rulemaking.

The consortium of environmental and conservation groups commented that the fact that a permittee or lessee has a loan should not guarantee that the permittee or lessee has a right to an automatic renewal of his or her permit or lease, nor should it guarantee that any particular number of livestock can be run on the permittee's or lessee's allotment.

The Center for Biological Diversity (CBD) commented that permits should not be used as collateral for loans, because permits are not the legitimate property of the permittee. It said permits should include terms and conditions specifically preventing their use in this manner. It also commented that other methods, such as allowing competitive bidding for permits or leases, would remove the incorrect perception that permits are a property interest. The CBD commented that Section 4130.9 should be deleted because it illegally recognizes the use of permits and leases as collateral.

The University of Wyoming Law School commented that BLM should delete Section 4130.9 because grazing permits are not legal property interests and treating them as such skews real estate markets and increases pressure on rangelands and encourages range managers to serve individual interests while diminishing economic benefits of healthy rangelands not priced in any market and not easily considered. (The Western Watersheds Project submitted identical comments on this provision.)

An environmental group commented that this provision shields permittees who are bad stewards or who have borrowed against their permits in an illegal attempt to make livestock use the dominant use on the public lands. The group said the TGA, FPLMA, and PRIA require that public lands be managed for multiple uses.

2.2 Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease

The Environmental Protection Agency (EPA) commented that it supports giving preference to applicants who promote wildlife habitats, water quality, healthy riparian zones, and encouraging native vegetation because these are important factors and should be an integral part of BLM's criteria for issuing permits.

The Oregon Natural Desert Association (ONDA) commented that the present regulations on these issues clearly direct BLM to provide detailed information to the public about any problems BLM perceives. It commented that when considering changing the regulations, the BLM should include the following provisions clarifying that persons will not qualify for a

grazing permit if:

1. They have failed to comply with grazing permit terms and conditions, especially when: utilization levels.
2. They repeatedly trespassed.
3. They failed to maintain exclosures or other fences.

The State of Arizona Game and Fish Department supports this considered change and believes the BLM should not change any of the grazing regulations that would diminish the requirements to maintain a record of satisfactory performance.

A commenter said the courts have found that individuals who hold preference rights on BLM grazing allotments must be engaged in the "livestock business." The commenter said the TGA stipulations have been so diluted that groups or associations can qualify for an allotment preference right even though they are not actually engaged in the livestock business. The commenter said the BLM must revise the grazing regulations so grazing permits are only issued to bona fide livestock operators and allotments are used for legitimate livestock grazing purposes.

Representatives of the Western Watersheds Project commented that this section does not need clarification. It wants BLM to consider the following:

1. Removing livestock from areas unsuited for grazing.
2. Replacing the present grazing fee formula with a system of competitive bidding to ensure compliance with the mandate in 43 U.S.C. Section 1701(a)(9) that the government obtain fair market value for public resources.

The Utah Farm Bureau Federation commented that the BLM should reinstate the pre-1995 definition of "grazing preference" because Range Reform eliminated permittees' rights to additional forage within their preference amounts even when it became available. The Federation commented that the BLM's 1995 regulation change let the BLM reduce the number of AUMs historically held under grazing preference on allotments during periods of drought or in response to appeals for expanded wildlife use. The Federation commented that it is now exceedingly difficult for ranchers to recover their historical permitted grazing use after the cuts have been made.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that it supports requiring a permittee to be engaged in the livestock business to qualify for a permit.

One commenter stated that only those parties legitimately engaged in the livestock business should be allowed a grazing preference. The commenter believes that the Secretary's Four C's approach on the local level is the correct way to provide incentive for proper management. He stated that when communities agree on a management plan everyone benefits.

A commenter said the BLM should allow nongrazing parties to buy and hold a grazing permit for the conservation use or to improve the health of range lands or improve water quality.

2.3 Clarifying the provisions addressing grazing preference transfers

An environmental group commented that the BLM should not allow preference transfers and that issuance of a permit to a new permittee is a new permit issuance, not a transfer. the group commented that issuance of all new permits or reissuance of existing permits should be

open to competitive bidding and occur only after full compliance with NEPA.

The CBD commented that the BLM should not allow transfers of grazing preference. It commented that issuing a new permit to a new permittee should not be considered a transfer and wanted permit issuances to be subject to full NEPA disclosure and conformance with all other resource protection laws prior to issuance.

The University of Wyoming Law School commented that grazing preferences should not be transferred and, before issuing or reissuing any permit, the BLM must ensure full public disclosure to comply with NEPA, FLPMA, and any other environmental protections required by other law or regulation.

Great Old Broads for Wilderness commented that BLM should not transfer preference for permits and that the permitting process should be open to competitive bidding and that issuance of permits to a new permittee should be through a new permit, not a transfer, and that permits should be subject to full NEPA disclosure and conformance with all other resource protection laws prior to issuing a permit.

A commenter said BLM is incorrect regarding the transfer of "preference right" versus "transfer of the grazing permit" because BLM already has the nondiscretionary requirement to transfer the preference right to qualified applicants. The commenter said that when the preference is transferred, the new permittee should be entitled to graze under the same terms and conditions as the immediately preceding term permit until BLM issues a decision and, allowing for appropriate administrative appeal, changes the terms and conditions of the permit.

The Western Watersheds Project commented that "preference" should not be transferred. It commented that when a permit is issued to a new permittee it is being "issued" not "transferred." It also commented that BLM must ensure a full public disclosure and compliance with NEPA, FLPMA, and any environmental protections required by other law or regulation before issuing or reissuing any permit.

2.4 Reinstating an earlier provision that BLM and permit holder may share proportional title to certain range improvements

Generally, many commenters who opposed the considered changes expressed particular opposition to livestock operators sharing title to range improvements. Most of the commenters who supported the BLM's considered changes stated that sharing title to range improvements could improve an operator's ability to secure funding to continue operating.

Several commenters, including The Sierra Club and the consortium of environmental and conservation groups, opposed sharing title to range improvements because they believe it would allow the BLM to confer private property rights to permittees operating on public lands. The groups commented that "ownership of all such developments and improvements must remain in the public domain because the permittee is only an individual or corporation allowed by the public to use public lands."

The CBD commented that the BLM should not change the existing regulation because it said that it supported the 1995 regulations that clarified that permittees do not have a property interest in Federal permits when they build range improvements on Federal land.

The Association of Rangeland Consultants supported reinstating the pre-1995 provision allowing BLM and the permit holder to share title to certain range improvements because they think it is an incentive to good land stewardship.

The ONDA opposed changing this provision so soon after the 1995 revisions. It cites the

TGA and other court cases which, it said, demonstrate specifically that a permit to graze on public lands does not entitle the permit holder to any rights on public lands.

The Columbia River Basin Inter-Tribal Fish Commission (a coalition of the Confederated Tribes of the Umatilla, Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe) opposed sharing title to range improvements because this provision could allow property rights to be established on public lands that could interfere with transferability of permits.

The Matador Cattle Company, Dillon, Montana, supports this provision and commented that incentives like sharing title provide a better way for implementing and maintaining range improvements than punitive actions.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments and cited case laws that they say support their opposition to sharing title to range improvements.

The State of Arizona Game and Fish Department commented that if this provision is introduced, the BLM must ensure that wildlife and wildlife-related recreational interests are considered and addressed.

The Montana Wildlife Federation opposed sharing proportional title to range improvements unless they are short term and the permittee intends to remove them.

The NCBA and PLC strongly urged the BLM to revise Subpart 4130 to read as follows:

"Title to structural or removable range improvements will be shared by the United States and the cooperators in proportion to the amount of their respective contributions to on-the-ground expenses of initial construction."

The NBCA and PLC said the BLM should amend Section 4130.3-3 Range improvement permits in the existing regulations to read:

"When the permittee or lessee agrees to provide full funding for construction, installation, modification, or maintenance of structural or removable range improvements, the permittee or lessee will hold title to those improvements authorized under this section. The permittee or lessee will control livestock ponds, wells, or pipelines when their construction is authorized under this section. The permittee or lessee may enter into an MOU with BLM to allow the use and maintenance of the improvements by activities other than livestock grazing."

The University of Wyoming Law School commented that the Supreme Court approved the 1995 changes to the regulations. It said the BLM is trying to place the economic interests of a small number of permittees and licensees above public interests and above the goal of managing the multiple resources and values of public lands. It commented that the BLM is disregarding FLPMA's mandates without considering the relative scarcity of the values involved or weighing the long-term benefits to the public against short-term benefits to the permittees. (The Western Watersheds Project submitted duplicate comments regarding this provision.)

The New Mexico Farm and Livestock Bureau supports shared title to range improvements and, in particular, co-ownership of range improvements or ownership by permittees who fund their own improvements with no contributions by the government.

The Nevada Farm Bureau (NFB) commented at the Reno public scoping meeting that the NFB's public policy position encourages actions to expand private development and ownership of stock water and Federal land. It said this policy is important for increasing benefits for enhanced resource conditions as a result of maximum livestock distribution for expanded water development projects. It also said that providing ranchers with the opportunity for developing water resources on Federal lands expands the resources available

for improving resource management.

The Western Watersheds Project commented that it opposes sharing title to range improvements because allowing permittees to "own" improvements may result in misunderstandings between permittees and the BLM over whether protective actions taken by the BLM constitutes a "taking" of property. It said these situations would involve great expense to the public.

The Utah Farm Bureau Federation commented that farmers and ranchers who pay for and construct range improvements should have an ownership interest in them, and should be able to list them as an asset on a producer's balance sheet. The Federation commented that little of the Federal money that is earmarked for range improvements goes toward on-the-ground improvements and there are presently no incentives for cooperation. The Federation commented that shared title to range improvements would give permittees incentives to construct and maintain range improvements on Federal lands.

The Custer Rod and Gun Club commented that it opposes sharing title to range improvements and that the BLM should retain ownership, thereby guaranteeing flexibility in the grazing management of the public lands.

The Conservation Roundtable of Billings Montana opposes this provision because physical improvements are permanently attached to the public lands and, therefore, ownership must be held and owned by the public land management agency.

The American Farm Bureau Federation commented that sharing title to range improvement would provide co-ownership and permittees with the incentive to construct and maintain range improvements of federal lands. The federation commented that "permittees operating on the allotments are in a better position to maintain those improvements than BLM personnel with limited time on the ground and limited funding."

The National Association of State Departments of Agriculture (NASDA) commented that allowing permittees or lessees to retain ownership of their portion of permitted range improvements provides incentives for permittees or lessees to invest funds in the improvement of Federal land. The Association commented that permittees and lessees should be compensated for, or allowed to retain, ownership of their portions of the investment.

Animal Alliance opposes sharing title to range improvements because it is concerned that the BLM would have to bear the high cost of buying out the permittee or lessee if BLM must remove them from their allotment.

The New Mexico Farm and Livestock Bureau commented that ranching on public lands is the fourth largest contributor to that State's economy, and reinstating ownership of range improvements would stimulate sustained growth and stability for New Mexico by recognizing and rewarding the custom and culture of livestock production.

The New Mexico Public Lands Council commented at the Albuquerque public scoping meeting that it supported sharing title to range improvements because the long-standing livestock industry is the fourth largest sector in New Mexico and, therefore, must receive incentives to continue the industry's sustained growth and sustainability.

The Montana Farm Bureau commented at the Billings public scoping meeting that it supported sharing title to range improvements because it would provide incentive for range improvements.

A commenter at the Billings public scoping meeting said he supported shared title to range improvements because it will improve public land for everyone, not just the permittee.

A commenter at the Reno public scoping meeting said he supports shared title to range improvements because it provides incentive to operators. He commented that the pre-1995

system worked and ranchers "should get some of that back."

The California Farm Bureau commented at the Reno public scoping meeting that shared title to range improvements gives operators incentive to put "sweat equity" and their own dollars into improvements on their range so they can show a balance sheet to a banker when they have to justify those expenditures.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meetings that range improvements need to be owned, at least in part, by a permittee. They said ranchers invest time and money in developing improvements that benefit wildlife and livestock and they support the provision to share title as it existed before rangeland reform.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meetings that it supports proportionally sharing title to range improvements and if the operator invests 100% of the cost associated with an improvement, then the operator should receive title to that improvement.

A commenter at the New Mexico public scoping meetings said he was concerned about the number of changes the BLM is proposing. He commented that he owns a ranch in the area but does not run livestock. The commenter said sharing title to improvements for the purpose of livestock grazing does nothing for other users of the land and he does not believe it is appropriate to reward permittees for making changes on public lands that are not advantageous to other land use purposes.

The consortium of environmental and conservation groups commented that a provision giving operators title to range improvements is unjustified and will interfere with the BLM's ability to take necessary action to comply with FLPMA's mandate of resource protection.

The Conservation Roundtable said ownership of physical improvements that are permanently attached to the public lands (pipelines, wells, reservoirs, and others) should be retained by the land management agency because such improvements are important to multiple uses of the land. It also commented that policies that propose other alternatives should assess how private ownership of the improvements affects the ability of the agency to transfer grazing privileges from one permittee to another, and the cost and effects to the public for the use of those lands.

The Northern California Resource Advisory Council said the "proposed rules" subordinate public property rights, benefit private interests, and violate the public trust doctrine.

A commenter from Montana opposed sharing title to range improvements on BLM lands because in Montana the practice limits the State's ability to consider other applicants for grazing permits. The commenter said shared title is a burden to track and gives existing permit holders an advantage over anyone else who may apply for a grazing permit.

A commenter at the Reno public scoping meeting said that most of the BLM's proposed changes were unnecessary and had nothing to do with conservation. The commenter said that the BLM is proposing to give away private property rights and livestock facilities.

A commenter opposed sharing title to range improvements because he believes it is bad public policy to permit anyone to establish private property rights on the public's land. The commenter said if the BLM implements this change it would lead to takings litigation and result in BLM having to impose additional management prescriptions to protect public lands.

A commenter said permittees should be expected to participate in development of worthwhile investments that will improve and health, wildlife, and livestock values and provide a return on their investment. The commenter stated that livestock operators shouldn't be expected to invest without reasonable assurances they will be able to recapture a fair return on their

investment.

A commenter said that the BLM should hold full title to all improvements because the TGA grants permittees perpetual benefit of their permit and improvements as long as they manage the resources responsibly. The commenter stated that permittees have renters' rights and no more. The commenter said a permittee should own title to temporary range improvements as long as they are removable or portable.

2.5 Clarifying that BLM will follow State law with respect to the acquisition of water rights

Nevada State Senator Dean Rhodes supports "allowing States to return to the favored, traditional three-way system, as it existed prior to the 1995 regulation changes." The Senator states that the plain language of the regulation and Nevada's water laws provide for a three-way system allowing the BLM to obtain stock water permits in the name of the Federal government.

Senator Rhodes commented that joint permits or permits that are issued only in the name of the range user are no longer possible in Nevada and the Federal regulation seems to require the BLM to acquire stock water rights exclusively in the name of the United States. He believes this approach precludes a range user from holding the water rights solely in the user's name, even if the user was fully responsible for the development of the water rights and putting the water to beneficial use.

The Senator also commented that as a result of the 1995 changes made to the grazing regulations the Nevada Legislature is considering introducing legislation urging the Secretary to amend this specific regulation and remove the requirement that stock water rights must be acquired in the name of the United States.

The Northwest California Resource Advisory Council recommended that the BLM consider that the government should hold water rights associated with livestock grazing allotments for the benefit of the livestock permittee and other beneficial uses .

The Humboldt River Basin Water Authority, representing five Nevada counties, commented that BLM need not change its regulations because the regulations clearly state the requirements and parameters under which "...any such water right is to be acquired, perfected, maintained, and administered in the name of the United States."

The CBD commented that the BLM should not change the existing regulation because Section 4120.3-9 already allows water rights that are acquired to be subject to State law where applicable. It commented that the regulations should be strengthened to require BLM to assert and use reserved and other existing water rights, with priority given to wildlife and recovery of T&E species.

The Association of Rangeland Consultants commented that the BLM should clarify and emphasize that it intends to follow State law with respect to the acquisition of water rights.

The State of Arizona Game and Fish Department commented that it does not understand the need to change the present regulations and that BLM should continue to file for water rights in a way that is compatible with multiple-use management, including fish and wildlife purposes.

The ONDA commented that the BLM should emphasize that water rights do not constitute a claim for compensation if a permit or lease is cancelled to devote lands to another purpose. It commented that the BLM must make this provision consistent with Hage v. United States, 51 Fed.Cl. 570 by reaffirming that permits are only a license to use the land, not an irrevocable

right of the permit holder.

The Montana Wildlife Federation opposes BLM's considered changes to acquiring water rights because the BLM should hold all water rights needed for appropriate uses and management of public lands.

The NCBA and PLC commented that the BLM should revise and amend section 4120.3-9 Water rights to read as follows: "BLM will follow State water law to provide livestock water on Federal lands."

The Western Watersheds Project commented that the BLM should not change the present regulations except to require that any water rights acquired by BLM on public lands in the course of administering grazing permits shall include specific water right protection, including compliance with the Clean Water Act.

The Conservation Roundtable of Billings, Montana, commented that the BLM should prohibit the construction of any range improvement if it enables a permittee to meet State law requirements for acquiring a private water right on public land. It commented that the BLM should hold, under State law, all water rights needed for all appropriate uses and management of the public lands.

The National Association of State Departments of Agriculture (NASDA) commented that the use and appropriation of water rights by any entity, including the Federal government, must be in accordance with State law. The Association commented that any proposal, either administrative or legislative, must not create an expressed or implied reservation of water rights in the name of the United States and that the Secretaries of the Interior and Agriculture must follow State law regarding water ownership.

The Utah Farm Bureau Federation supports State control of water rights because it prevents encroachment by government agencies on private water rights and stock-watering rights issued to individual permittees when they construct water developments on private land. The Federation asked the BLM to amend the existing regulations to allow water rights for livestock grazing to be acquired in the name of the permittee, as was allowed before 1995.

A commenter at the New Mexico public scoping meetings said, "In New Mexico, BLM's attempt to acquire water rights will be opposed because in that State water is property and according NMS 72 Water Law—Property Rights, the Federal government is only permitted to have water as per their specific reservation related to the purpose of reservation."

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it is critical for the BLM to follow State water law and State water regulations in order to maintain continuity.

The Montana Farm Bureau commented at the Billings public scoping meeting that the BLM must clarify its intention regarding BLM following State law with respect to the acquisition of state water rights.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meeting that any water rights should be acquired through the process established before 1995 under State water law.

The consortium of environmental and conservation groups commented that the BLM was too vague in the ANPR and it doesn't know what types of modifications the BLM is considering. It said there is no need to change this regulation because if the BLM owns the water rights on the land it controls, then the BLM specifies how those rights are to be used. The consortium comments that if the BLM can justify changing the existing regulation, then the BLM must consider the following:

- Ensure changes will not limit the BLM's ability to manage the lands surrounding the

water right even when it results in suspending or reducing grazing and the BLM devotes the land and water to other purposes.

- When States have statutes precluding the BLM from holding a State water right, the BLM must continue to assert a right to acquire, possess, and maintain water rights on its land for appropriate purposes.
- The EIS must contain a complete analysis of the possible environmental consequences of any change to the existing rule.

A commenter stated that the BLM should adhere to the pre-1995 livestock water rights on public lands.

A commenter said the BLM must not concede all authority over water rights to States because States won't properly manage water resources. The commenter asserted that States would drain or degrade natural watersheds to support short-term livestock interests. This commenter also said he opposed provisions that "give away the Federal government's water rights" by conceding to State's rights. The commenter states that the BLM must retain the ability to assert Federal water rights, which may be more important for public purposes such as fish and wildlife habitat and other public uses.

2.6 Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations

General Comments: The majority of comments BLM received, from both supporters and opponents of other proposed changes, expressed opposition to BLM's consideration to allow temporarily locked gates on public lands. The most widely expressed concern was that ranchers would indiscriminately prevent the public from gaining access to public lands. Several commenters said this was already occurring on public lands in some western States. Some supporters of BLM's proposed grazing rule changes stated that they opposed the locked gates provision because they feared livestock operators would be blamed for making BLM close off access to public lands. The BLM can authorize locked gates in specific instances. This provision would not change the present regulation, and therefore, BLM has decided to remove this provision from consideration in the proposed rule.

The Northwest California Resource Advisory Council (RAC) commented that it had concerns about "limiting public access to public lands" and it unanimously agreed that BLM already has the authority to order emergency public land or road closures where necessary.

Several commenters from Idaho stated that unauthorized locked gates on BLM land is a long-standing, significant problem in that State and they believe the provision will aggravate the situation because more access to more public lands will be prohibited.

The Columbia River Basin Inter-Tribal Fish Commission commented that it opposed locked gates on public lands because in it would interfere with access for the public and could restrict tribal access to reserved resources on public lands. If there are problems with gates being left open, BLM should investigate other avenues to address the problem, like signs and imposing fines.

The Wyoming Game and Fish Department opposes authorizing locked gates on public lands because the BLM must consider the public's access when it is associated with fish and wildlife recreational pursuits—often a significant part of local economies and lifestyles. The Department also commented that access to public lands is necessary for adequately managing

big game populations.

The Montana Wildlife Federation (MWF) opposes BLM's consideration to allow temporarily locked gates on public lands. The Federation stated this would be inconsistent with BLM's own intentions to consider the effects. The Federation also stated that agriculture is presently second in economic importance to recreational pursuits. Loss of access for hunting and fishing recreationalists would negatively affect Montana's economy. The Federation commented that present grazing fees are so low as to be considered a subsidy given to a few. The MWF asked the BLM to consider implementing competitive bidding for grazing leases to bring fees closer to fair market value.

The NCBA and PLC do not support the provision to authorize locked gates on public lands. They believe the issue is more appropriately addressed in other regulations guiding BLM and State and local governments regarding roads on public lands.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments opposing locking gates on public lands because permittees merely have a revocable license giving them a privilege to graze public lands. The groups believe that permittees have no right to deny the public access to public lands.

Idaho State Parks and Recreation opposed allowing locked gates on public lands and commented that private property owners already have the right to lock gates on their own lands and therefore the ability to lock gates on public lands is a bad idea and should not be considered in the proposed regulations. The department suggested, "Although some public land grazers complain that recreationalists leave gates open allowing animals to move into unauthorized areas, open gates are problems with many solutions." They commented that BLM could improve efforts to educate the public on the importance of closing gates. Gates that are easy to close tend to be used more responsibly.

The Idaho Department of Fish and Game (IDFG) said BLM should abandon this consideration because the department received numerous complaints and concerns from the public who adamantly oppose this provision. In 2002, IDFG conducted a survey of 3,000 individuals who identified access to public lands as one of the top five issues they thought IDFG should address.

The State of Arizona Game and Fish Department opposes the provision to authorize locked gates on public lands and states the public should not be denied access to public lands unless all other methods to resolve this have been exhausted.

The ONDA commented that authorizing locked gates on public lands would be inappropriate and runs counter to the entire concept of public lands. It cited the present regulations, in which they said the Secretary made it illegal for any person to obstruct free transit through or over public lands by force, threat, intimidation, signs, barriers, or locked gates. The group states they see no compelling reason why private property rights or livestock operations should possibly override the public interest in having access to public lands.

The Sierra Club, Rocky Mountain Chapter, is concerned that locked gates will allow bad permit managers to shield the consequences of their practices from public view. It said access questions should be decided on the basis of a public process in which the most important parameters to be considered are critical wildlife habitat, watershed protection, and protecting recreational use for the long term.

The University of Wyoming Law School opposed the provision to propose locked gates on public lands because it would aid permittees and not improve rangelands or public values.

The Nature Conservancy commented that BLM already has the authority to close areas temporarily to public use to protect public health and resources. It stated, "Beyond these exceptions, we believe that all interests should have equal access to public lands."

An environmental group commented that the principles of the 4Cs and multiple use require the public to have access to all allotments to gauge the condition and management of the public lands.

Great Old Broads for Wilderness commented that giving ranchers control over access to public lands and ownership of facilities on public lands complicates range management and may violate a number of laws.

The consortium of environmental and conservation groups commented that it opposes locked gates on public lands for the following reasons:

1. The prohibition against locking gates on public lands and blocking access to public lands is a statutory requirement with which BLM cannot interfere. BLM's authorization of such an action erodes the agency's mandate under FLPMA to manage the public lands for "Multiple use and sustained yield."
2. The EIS must clearly define what constitutes "temporary" and the environmental and recreational consequences resulting from such a closure.
3. If the BLM allows a permittee to block access to public lands, it must provide a mechanism to allow some publics, namely State or county employees and the BLM to have access to those lands to monitor activities occurring on them.

Water Access Association, Inc., of Montana opposed allowing ranchers to lock gates and said that the public wants more access to public lands, not less.

The Public Lands Foundation urged BLM to consider cancelling a grazing permit if the permittee prevents the general public, or company holding a Right-of-Way permit to cross public lands, from obtaining lawful access to the public lands without written permission from the Field Office Manager.

The Conservation Roundtable of Billings, Montana, commented that the EIS should assess the effect on the public's use of the land if permittees abuse their privilege to close public lands. The group recommends that BLM cancel a grazer's permit if the grazer impedes the public's lawful access to public lands.

The Sierra Club commented that it opposes any provision that would impede or prevent the public's access to public lands.

The Taxpayers for Common Sense commented that it opposes any alterations that would limit public access to Federal grazing lands or reduce the opportunity for public input into the oversight and management of these lands.

The County Commissioners of Garfield County, Utah, commented at the New Mexico public scoping meeting that they opposed locking gates and preventing access to public lands at any time. The Commissioners said they would consider supporting the provision if the permittee needed to lock a gate to take some kind of action beneficial to ranching action.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that it supports allowing temporary locked gates at certain times, particularly during lambing and calving or to enable the operator to protect his or her private property.

A commenter at the New Mexico public scoping meetings said he is concerned about BLM's proposal to restrict public access to public lands.

A commenter at the Reno public scoping meeting said his primary concern was BLM's consideration to allow locked gates on public lands.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it believes allowing BLM to lock gates on public lands sends the wrong message to the public

and creates ill will. It said it is not appropriate for grazers to try to lock out a segment of the public.

A commenter cited "Idaho Code" (I.C. 40-203(1)) and said this proposed provision might be contrary to that law as it pertains to public rights-of-way that include those that furnish public access to State and Federal public lands and waters.

A commenter at the Billings public scoping meeting said that he supports locking gates to protect property on public lands because livestock are often killed or stolen during hunting season.

The Northern California Resource Advisory Council said the "proposed rules" would diminish public access and public enjoyment of BLM lands.

A commenter opposed locked gates placed on public lands by private landowners. By lessening access, BLM will contribute to more destruction of fragile dry public lands in the West.

A commenter said that when ranchers acquire grazing rights on public lands they know the issues and constraints that go along with grazing on public lands. The commenter said ranchers know that the public has access to the land and this may be problematic because the landowner must request that BLM or law enforcement deal with recreational user violations, just as recreational users can request that BLM law enforcement deal with overgrazing or other permittee violations.

A commenter said public access to public lands will not harm grazing operations because ranchers are only there as the result of BLM's balanced approach to public land use.

A commenter opposed limiting public access to public lands because, although BLM may desire to protect private lands and livestock operations, the public pays taxes to own those lands and keep those lands in good condition. The commenter said locked gates equals taking away public lands and, even when temporary, gives added support to private landowners and agribusiness.

A commenter opposed allowing locked gates on public lands and says ranching concerns routinely post "No Trespassing" signs on public lands and deny access to other public users.

A commenter opposed locked gates on public lands because it would prohibit public access and set aside public resources for exclusive use.

A commenter said public access to public lands in Idaho is already hampered and stopped by illegal locks placed on gates.

A commenter said the grazing industry pays a pittance to graze livestock on public lands and that does not give it a right to damage watersheds and destroy the natural biodiversity, nor does it entitle the grazing industry to exclude other users from public lands.

A commenter opposed the provision and says he has been verbally abused and threatened by a private landowner while on public lands. The commenter said many ranchers work to improve the land; however, many treat their inherited leases as if they were private property.

A commenter said the BLM intends to give ranchers control of the public's right to access public lands. The commenter said that property owners were responsible for protecting their own lands but that should not include blocking access to public lands. The commenter stated that private property owners are already illegally locking the public out of public lands in Idaho, where he resides.

A commenter supported temporary locked gates because "locking up specific areas for wintering big game, nesting sage-grouse, and other critical values are best defined by the local residents and should be given consideration. Illegal access to private land through BLM

land is a big problem in some areas and BLM should retain the right, with local agreement to block access, only for a short time where this is an issue."

A commenter opposed allowing locked gates on public lands and commented that by allowing ranchers to block access to public lands BLM will be reverting to the times when the dominant use of the public lands was livestock grazing, while recreational, environmental, and ecological concerns were ignored.

A commenter said any decision to limit access to public lands should be avoided except for specific reasons that have undergone public scrutiny and public debate. He said locking the public off of their public lands only benefits private livestock operators.

A commenter opposed allowing livestock owners to lock gates to public lands because "BLM lands belong to the public and BLM's Organic Act guarantees the public's access to these lands the same as the ranchers who are renting space."

2.7 Clarifying which nonpermit-related violations BLM may take into account in penalizing a permittee

The Sierra Club commented that permit violations need to have consequences and permittees must follow all applicable environmental laws, including the Endangered Species Act and the Clean Water Act. It also commented that failure to comply with the laws should be grounds for terminating a grazing permit or lease.

The Nature Conservancy commented that the BLM must retain its present authority to cancel, suspend, or deny renewals of permits when permittees violate laws or regulations when the violation is related to grazing use.

A commenter said only permit violations that have been upheld by the OHA, IBLA, or a Federal court as a final agency action should be used in determining any future penalties against grazing permittees.

An environmental and conservation group commented that the BLM should not change the 1995 provisions that expanded the list of prohibited acts. It said these include violations of Federal environmental, natural, and cultural resource laws.

The EPA commented that the BLM should retain the ability to revoke a permit in situations where nonpermit violations, such as Clean Water Act violations, have resulted in significant adverse environmental effects.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that failure to comply with applicable Federal environmental laws such as the ESA should be grounds for terminating a grazing permit or at least significantly reducing permitted use.

The Sierra Club, Rocky Mountain Chapter, commented that it would support BLM's authority to deny permits to those who abuse environmental and other laws, whether on public land or otherwise, because other government entities often place similar conditions on contractors and the BLM should continue to do the same.

The NASDA commented that it supports the provision to remove and reduce the number of violations that could result in a permittee losing their permit because they believe the 1995 grazing regulations created a "double jeopardy issue."

The Utah Farm Bureau Federation commented that BLM should not have authority to take action against a permittee for actions that do not violate the terms or conditions of his or her permit. The group also commented that any such violation should be addressed within the confines of the particular law or regulation that allegedly was violated and not by taking an

action against a grazing permit. The Federation also commented that permittees should not be at risk of losing their permit for violation of any law or regulation outside of the specific scope of the permit.

The Oregon Cattlemen's Association commented at the Reno scoping meeting that the BLM should not be allowed to take action against permittees for actions that do not violate the terms and conditions of the permit itself.

The Montana Farm Bureau at the Billings public scoping meeting commented that his group opposes BLM's taking action against a permittee for actions that do not violate the terms and conditions of the permit.

The consortium of environmental and conservation groups commented that they strongly oppose rolling back these provisions because the present rule provides incentives for permittees to be good stewards of the public lands as well as of their livestock.

A commenter said removing this provision would avoid "double jeopardy" issues.

A commenter supported the provision, stating that only violations directly related to the grazing permit itself should be a consideration for cancellation of a permit.

A commenter said the BLM should strengthen the provision for determining and pursuing permit and nonpermit violations that violate environmental laws that were passed to protect public resources on public lands.

The Western Watersheds Project commented that the only change BLM should make to the present regulation is to amend the current regulation by deleting 43 C.F.R. §4140.1(a)(2).

2.8 Considering ways to streamline the grazing decision appeal process

The ONDA commented that the present grazing decision appeal process takes an inordinate amount of time, is largely ineffective, and does not actually stop an action from going forward. The ONDA commented that they support streamlining time lines and procedures. They are concerned that streamlining the process will eliminate the public's ability to participate in appealing grazing decisions.

The Grand Canyon Trust commented that although there may be legitimate reasons to streamline the grazing appeals process, no changes should be made that diminish the public's ability to participate in, or challenge, the decision-making process.

The CBD commented that BLM must revise the regulations to provide broader public access to administrative remedies for grazing decisions. It commented that the BLM should also provide a simpler appeals process giving State Directors authority to suspend ongoing grazing or stay the proposed action if there is evidence of harm to resources by ongoing or planned grazing in the project record.

The Sierra Club opposed streamlining the permitting process because it doesn't think BLM ever denies the privilege to graze to a permittee. It commented that the permitting process should remain open to public scrutiny and that BLM should seek additional ways to involve the public in making determinations for public lands.

The Columbia River Basin Inter-Tribal Fish Commission commented that although the tribal consultation and trust responsibility obligations are separate from the general public's input process, tribal concerns are often relayed through that same public input process. The Tribes are concerned that this provision could limit or eliminate the public's, and their own, ability to participate in the management of public lands.

The Sierra Club's Rocky Mountain Chapter commented that the BLM is making worse an already cumbersome appeals process that neither remedies nor alleviates environmentally damaging agency grazing decisions. It asked the BLM to limit what it considers a nuisance of appeals; saying it would be better for the agency to improve opportunities for public participation in the decision-making process.

The Western Watersheds Project commented that the BLM should allow broader public involvement and make it easier for the public to obtain an administrative remedy for unsound grazing decisions. It commented that the rules should provide a simpler appeals process to the appropriate BLM State Director who should have express authority to suspend grazing use or stay a proposed action if the administrative record shows that ongoing grazing has harmed or is harming the resources, or if such harm is likely to occur if the proposed action goes forward.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments that generally supported BLM's efforts to ease a bureaucratic process. But they are concerned that this could limit the public's ability to participate in grazing administration and policy decisions. It also commented that BLM should strive to increase the public access to administrative remedies such as suspension of ongoing grazing if evidence exists of harm to natural resources from grazing.

The Sky Island Alliance recommended that BLM allow broader public access to administrative remedies for grazing decisions and asked BLM to consider providing a simpler appeals process for State Directors with authority to suspend ongoing grazing or stay the proposed action if evidence of harm exists.

A commenter at the New Mexico public scoping meetings said he is concerned about BLM's proposal to streamline the appeals process because he thinks BLM will continue to restrict engagement of broad public interest in issues regarding public lands. He commented that it is inappropriate to reduce the number of people who are allowed to appeal rulings.

The Matador Cattle Company, Dillon, Montana, supports the provision to streamline the appeals process and recommends BLM require an appellant to post a bond when they appeal a decision.

The consortium of environmental and conservation groups commented that BLM is attempting to restrict the right of their organization, their members, and other members of the public from participating in appeals affecting their use, enjoyment, or organizational interests in the public lands. It commented that such restrictions are inconsistent with FLPMA and are inconsistent with the Secretary's "Four C's."

A commenter said they opposed streamlining the grazing appeal process because it took years and much effort to develop a process that is highly effective, efficient and enjoys a high degree of accuracy. The commenter also said that streamlining the grazing appeals process would give the petitioner a more advantageous position and give BLM less management ability to work for common ground in grazing decision appeals.

A commenter supported the provision and the importance of the Secretary's "Four C's." The commenter said BLM should look to local collaborative groups to provide the main voice for directing management goals on BLM lands within their communities.

A commenter said this provision would remove the general public's ability to participate in decisions on public lands. The commenter also said the provision would hamper the public's ability to participate and comment on BLM grazing decisions for public lands.

A commenter said the proposed revision could make the grazing appeals process a "private club" and that the appeals process and grazing decisions are "the public's business."

2.9 Extending the time that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs

In general, most commenters supported allowing the BLM the flexibility to authorize temporary nonuse for longer than 3 years. Many commenters, however, misunderstood that BLM is seeking to authorize temporary nonuse when the permittee or lessee requests it for personal or business reasons or for resource protection or rehabilitation, not for BLM-initiated actions.

The Sierra Club commented that nonuse of grazing permits for recovery purposes should be determined by the accomplishment of range health or conservation goals. It recommended that the BLM should consider recovery periods of 5 to 20 years when necessary; when the land has recovered, the BLM should reduce the number of AUMs to keep those lands in a healthy condition.

The CBD commented that the BLM must have the authority to grant nonuse for the entire 10 years of a permit or longer or until resource conditions have fully recovered, without needing to make land use plan amendments.

The consortium of environmental and conservation groups commented that Section 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration should be amended because BLM has had 8 years since Rangeland Reform but has not assessed thousands of allotments to determine if standards are being met or guidelines followed. The BLM is adding another layer of delay by failing to require prompt corrective action. It commented that, at most, a 6-month grazing period might be appropriate in certain limited situations.

Forest Guardians, Animal Protection Institute, and Sinapu supported extending nonuse for conservation purposes and commented that the time frame should be extended beyond 5 years if necessary and should be tied to reestablishing rangeland health, rather than a standard number of years.

The Association of Rangeland Consultants commented that it approved extending the time period that BLM may approve nonuse of forage from 3 to 5 years in the interest of conservation and good land stewardship.

The ONDA commented that a period of nonuse for recovery of damaged rangelands should be tied to actual recovery rather than across-the-board number of years, that is, the period of nonuse should be determined by accomplishment of range health or conservation goals and should be tied directly to standards relevant to ecosystem health and recovery. It also stated that if an area has been returned to health, AUMs should be reduced so those public lands will remain healthy.

The State of Arizona Game and Fish Department commented that BLM's performance reviews must clearly state that failures to meet standards and guidelines for rangeland health, or, failing to achieve management objectives would result in the following BLM actions:

- A permit might not being renewed,
- Authorized use may be decreased, or
- The allotment may be reclassified.

The Wyoming Game and Fish Department supported expanding nonuse to 5 years to allow regeneration of native rangeland and habitat conditions because 5 years would allow BLM

more flexibility to achieve multiple-use benefits, and would be useful when used in connection with Reserve Common Allotments.

The State of Arizona Game and Fish Department supported BLM's provision to extend the current time period for nonuse of forage for resource improvement because these actions take longer in the arid southwest than other parts of the country. The Department also commented that BLM should consider approving nonuse of forage "until stated objectives are met" which, they said, may be more appropriate to a specific time period in some parts of the country.

The Idaho Department of Fish and Game supported extending the nonuse time period from 3 to 5 years and said they would support a longer period for nonuse—as long as 10 years when necessary.

The Owyhee Cattlemen's Association asked BLM to clarify what effects this provision may have on State water rights where beneficial use must be made.

The Nature Conservancy (TNC) commented that the provision is good for resource improvement purposes because of the present drought conditions throughout the west. They believe the present three years is insufficient to allow for range improvement following prescribed fire, wildfire, drought, or other range improvement treatment.

The Sierra Club, Rocky Mountain Chapter, recommended that BLM allow a longer resting period when it is necessary and commented that recovery times should be based on the landscape in question.

The Utah Farm Bureau Federation commented that the provision is necessary because, they said, Utah is now entering its fifth year of drought and extending the period of nonuse from 3 to 5 years will provide greater flexibility for producers to protect and enhance forage resources.

The Matador Cattle Company, Dillon, MT, commented that they generally support the provision but stated that after three years the ground "should be disturbed to maintain health and vigor and desirable plants."

The New Mexico Farm and Livestock Bureau commented that it supported BLM's provision to extend nonuse from 3 to 5 years because it provides greater flexibility to producers and to the forage resource. The bureau commented that this would provide BLM and the permittee or lessee greater flexibility to address situations that required the nonuse in the first place. The bureau also commented that it does not want this provision to become a substitute for "conservation nonuse."

The New Mexico Farm and Livestock Bureau stated concerns about potential conflicts between New Mexico state water law and BLM's provision. The bureau said that under New Mexico water rights nonuse of water for more than three years jeopardizes the holder's water rights. The bureau also stated that they would oppose the 5-year extension unless this issue is addressed.

The Western Watersheds Project commented that BLM should be authorized to grant non-use for 10 years or until resource conditions have fully recovered. It said that BLM should not have to develop an amendment to the applicable resource management plan because FLPMA, or RMPs, and the rangeland health regulations do not allow grazing that causes or perpetuates unhealthy rangeland conditions. It also commented that BLM's Planning Regulations should be revised to allow allotment cancellations and retirements by BLM.

The Montana Farm Bureau at the Billings public scoping meeting, said his group supported extending the time period for nonuse from 3 to 5 years but the proposed rule should be drafted so that this provision will only apply to people engaged in the livestock business as required by the TGA.

A commenter at the Reno public scoping meeting, that temporary nonuse from 3 to 5 years is OK, but cautioned that this was not enough time to significantly improve range health in the arid west.

The County Commissioners, Garfield County, Utah, commented at the New Mexico public scoping meetings that BLM should consider making this provision applicable only to those who are engaged in the livestock business as mandated by the TGA.

Southwest Resource Consultants, LLC, commented at the New Mexico public scoping meetings that extension of the 5-year period should be considered on a case-by-case basis because recovery often takes longer than 3-years.

The consortium of environmental and conservation groups commented that rangelands cannot be restored in three years and will not be solved by extending the time limit to 5 years because the real problem on BLM lands is that the permitted use exceeds actual use and grazing capacity. It commented that long-term voluntary nonuse is used improperly and that BLM should reduce or suspend the permitted use and bring permittees and lessees into conformance with the BLM's legal obligations.

A commenter supported the extension of temporary nonuse to 5 years and said BLM should not be limited to 5 years. She said BLM should consider approving nonuse for as long as necessary to rest and rehabilitate the resource.

A commenter said extending permitted nonuse from 3 to 5 years because two additional years of nonuse provides better habitat for wildlife and could lead to more appreciable utilization by other groups, especially hunters, presently the largest user group on public lands.

3.0 Considering amendments related to changes in permitted use

3.1 Creating provisions reemphasizing consideration of social, economic, and cultural effects, in addition to the ecological effects, of Federal actions to ensure compliance with NEPA

The Sierra Club, Rocky Mountain Chapter, commented that BLM and other Federal agencies often neglect public lands by placing too much emphasis on keeping local economies alive just because they exist. It commented that BLM's social analysis must clearly state the costs to the public for continuing nonsustainable grazing operations and the costs and benefits of continuing grazing on public lands.

The Grand Canyon Trust commented that the ecological impacts of grazing are well documented and BLM should give these impacts its greatest attention. It commented that the NEPA exists to protect the environment and the Act is intended to ensure that environmental information is available to public officials and citizens before decisions are made and actions are taken in accordance with the best available scientific information. It also suggested that if BLM wishes to place greater weight on the consideration of social and economic factors in the permitting process, BLM should require rigorous economic analysis including disclosing the true economic costs of public lands grazing to American taxpayers.

Forest Guardians, Animal Protection Institute, and Sinapu commented that they opposed BLM's provision to consider the social, economic, and cultural impacts of federal actions along with ecological considerations. The groups stated that NEPA does not justify protecting social or economic customs of ranchers at the expense of environmental degradation of public lands. The groups commented that although NEPA provides for consideration of historic, cultural, economic, social, and health effects of proposed actions its primary goal is to require agencies to consider environmental consequences of their decisions to protect the environment. The groups asserted that any other application violates the intent of Congress in its creation of NEPA.

CBD opposed any change to the present regulations regarding NEPA analysis.

The State of Arizona Game and Fish Department commented that social, economic and cultural elements should be considered in NEPA analysis but BLM should not reduce the evaluation or resolution of ecological impacts.

The Association of Rangeland Consultants supported any provisions that re-emphasizes impacts to local social, economic, and cultural interests, while considering the ecological impacts of federal actions. It commented that this best serves the interests of conservation and good land stewardship.

The County Commissioners of Washington County, Utah commented during the New Mexico public scoping meeting that NEPA requires that impacts to social, economic, and cultural interests be considered in an EA or EIS. He commented that livestock forms a vital basis for his county's rich cultural heritage and that this heritage should be considered in NEPA analysis and preserved.

The Utah Farm Bureau Federation commented that NEPA requires BLM to consider economic and social impacts in environmental impact statements and environmental analysis.

The Federation stated that livestock grazing forms a vital basis for the rich cultural heritage of the west and asked BLM to consider this heritage in any NEPA analysis and to preserve it.

The Humboldt River Basin Water Authority, representing five Nevada counties, commented that BLM should consider the fiscal impacts to local governments before implementing any proposed grazing administration regulations or any alternative regulations.

The Nevada State Grazing Board, District N-3, commented that environmental organizations routinely use the ESA litigation to remove livestock from public lands and BLM should consider a provision requiring cooperative planning among affected interests at the allotment level, including the permittee, and the US Fish and Wildlife Service if special status species are involved.

ONDA commented that NEPA is the basic national charter for protecting the environment and the Act's first and foremost purpose is to insure fully informed decision-making and to provide for public participation in environmental analysis and decision-making. It also commented that NEPA neither requires nor justifies perpetuating environmentally damaging land use practices to protect the social and economic customs of a minority of subsidized public land users.

The Wyoming Game and Fish Department supported BLM's provision to consider the social, economic, and cultural impacts from federal actions especially if those impacts may influence decisions associated with fish and wildlife recreation. The department commented that they are particularly concerned about impacts these rule changes might have to local economies and on recreational hunting.

The Sierra Club commented that commercial livestock grazing causes deterioration of the public lands, and is neither ecologically nor economically viable. It asked BLM to consider the following issues when addressing impacts of grazing on public lands:

1. Focus on the ecological effects of grazing.
2. Vigorously follow NEPA and emphasize sound biological and ecological science.
3. Consider social and economic factors only when biological and ecological effects are neutral.
4. Look at the long-term effects of grazing.

The Nature Conservancy commented that considerations of social, economic, cultural, and ecological impacts are required in all documents prepared under NEPA and stated that BLM does not need to duplicate those requirements in the grazing regulations.

An environmental group commented that it opposed BLM making any changes to the existing regulations. It opposed allowing social, cultural and economic review to take precedence over environmental review because the NEPA process can assist managers make decisions based on understanding environmental consequences of decisions. It also commented that BLM should take appropriate actions to protect, restore, and enhance the environment.

NASDA commented that as long as a "term grazing permit" is consistent with a land use plan that was developed within the provisions of NEPA that permit should not be considered a major federal undertaking requiring additional study or assessment under NEPA.

Animal Alliance commented that they opposed any proposed changes that focus on impacts of BLM's decisions on the social, economic and cultural aspects of NEPA because such a change would place a rancher's social and economic concerns above environmental protection.

The New Mexico Farm and Livestock Bureau commented at the New Mexico public scoping meetings that social, economic and cultural considerations must be conducted at the local community level. It said BLM presently only considers these issues on a state and national level and not within the actual communities that are

The Western Watersheds Project commented that no changes should be made to this provision because NEPA concerns for the human environment are clear, as are BLM's own implementing rules and those of the CEQ. It said that re-emphasizing these human impacts subverts NEPA's concern for ecological impacts. It stated that giving such impacts more emphasis in BLM's Planning Regulations increases the likelihood that BLM will continue to place the economic and purported way of life interests of grazing permittees above public interests specifically multiple use resources and values for which the public lands are to be managed.

Southwest Resource Consultants LLC, commented at the New Mexico public scoping meeting that BLM must make social, economic and cultural observations and considerations on the local level, in small communities.

The consortium of environmental and conservation groups commented that BLM should not include this provision in the proposed rule because BLM already gives precedence to the social, economic and cultural interests of ranchers over environmental considerations. The groups also commented that; "Seeking to protect the custom and culture of the western cowboy or to insulate the public land livestock industry from economic impacts is inconsistent with the resource protection mandates of FLPMA and NEPA."

A commenter said that BLM's NEPA analysis of potential impacts to social, economic, and cultural elements must include the financial losses incurred by the below-market payments that operators make to the Treasury during the life of grazing leases. The commenter stated BLM is giving subsidies to ranchers as a result of below-market fees and these should be considered as an offset to potential or real social, economic, and cultural impacts on grazing permittees.

A commenter supported BLM's considerations because public land is best managed with local input and goals and impacts to local social, economic, and cultural interests should be major considerations for NEPA compliance.

A commenter opposed the provision because BLM is ignoring the environmental considerations of NEPA in favor of the social, economic, and cultural needs of a small special interest group. She said NEPA reviews should focus on environmental impacts because the integrity of environmental review must be retained and other values, specifically economic, social and cultural, should be considered at the decision-making stage.

3.2 Requiring a permittee or lessee to apply to renew a permit or lease

One commenter stated that when the permittee follows "the plan", and monitoring verifies that fact, a permit should be renewed automatically.

A commenter said BLM Field Managers could show bias when considering applications for permit renewals and that requiring an operator to renew a permit can cause undue hardship and create excessive paper work for BLM staff. The commenter stated that BLM should consider renewing permits based on an operator's past performance.

A commenter said that when BLM determines a permittee must reapply for a grazing permit or lease it should recognize the requirements at 5 U.S.C. Sec. 558(c) and that BLM must inform the permittee of the process for re-application so the permittee can take full and timely advantage of the requirements detailed in the Administrative Procedure Act.

CBD commented that BLM should not allow automatic renewals of leases or permits because applications should be issued through competitive bidding to qualified stockowners.

The Western Watersheds Project commented that BLM should never allow increased livestock use of public lands and therefore, 43 C.F.R. §4110.3-1, should be deleted.

3.3 Determining what criteria BLM will consider before approving increases in permitted use

The State of Arizona Game and Fish Department commented that BLM should consider changing its criteria for approving increases in permitted use. The Department asked that such approvals be based on the best available scientific monitoring data and any increases should be approved only when forage and other habitat objectives have been met. The Department also commented that the present rule appears to only allow increases and they want BLM to also consider decreases in permitted use when necessary.

A commenter recommended that permittees be allowed to increase production on their allotment by 25% or more if they exercise "wise management." They also commented that such increases could be allowed in normal precipitation years.

CBD commented that BLM should delete §4110.3-1 because we should never approve increased grazing use. It said that scientific studies and agency reports show that the arid west has been chronically overgrazed by livestock and is no longer suited for grazing use.

3.4 Considering whether to amend the provision stating when BLM will implement action that changes grazing management

The ONDA commented that the present grazing Standards and Guidelines must be retained because it actually demonstrates whether permittees and lessees are meeting, not meeting, or significantly progressing toward meeting, land health standards.

The Association of Rangeland Consultants said BLM must clarify how to implement actions to change grazing management if we determine that land health standards are not being met. It commented that the current provision limits the amount of time BLM has to develop thoughtful solutions incorporating improved timing and sequence of grazing treatments.

The Public Lands Foundation commented that ownership of all permanent improvements placed on public lands must be held by the land managing agency. It commented that a "recent Supreme Court ruling" that upholds BLM's authority to take title improvements even when they are made cooperatively with a permittee.

The Northwest California Resource Advisory Council (RAC) asked if BLM intends to change the land health standards and livestock grazing guidelines developed by the RAC. This RAC wanted the EIS to clearly identify any portion of the land health standards and livestock grazing guidelines that would be affected by any regulation change.

The State of Arizona Game and Fish Department commented that any changes to this regulation must emphasize the need to complete evaluations and determinations to meet multiple use objectives and rangeland health standards as identified in the current regulations.

The Idaho Department of Fish and Game commented that in some areas of Idaho the land is not recovering sufficiently and the slow pace of improvements in rangeland health and fish and wildlife habitat could contribute to listing more species under the ESA.

EPA commented that it supported BLM's authority to amend permits whenever BLM determines the permittee is not meeting or progressing towards meeting land health.

The Nature Conservancy commented that this provision would affect BLM's attempts to restore and rehabilitate rangelands. It said it supported granting a reasonable time frame for permittees to make adjustments to their allotment management but they stated that livestock operators must still meet rangeland health standards.

Forest Guardians, Animal Protection Institute and Sinapu commented that they opposed this change and said that BLM must establish time frames to ensure that assessments are actually completed in conjunction with NEPA analysis at the time of permit renewals. The groups also commented that permits must not be renewed if standards are being continually violated.

The Nevada Department of Agriculture commented that one year is adequate time to achieve range improvements or change livestock distribution and show improvements. The department, however, said it doubts BLM can respond to new rangeland improvements within a year and get through all necessary review processes, analysis, and agricultural clearances.

The Western Watersheds Project commented that if BLM determined that a permittee has misrepresented compliance within the terms and conditions of their permit or lease BLM should institute an automatic 25% reduction in season of use and numbers of livestock by the following season of use.

4.0 Considering adding new provisions to the regulations

4.1 Establishing and administering a new concept called Reserve Common Allotments

General Comments: Second to the "locked gates" provision, this issue received the most attention and comments. Opponents expressed concern that Reserve Common Allotment (RCAs) would encourage and reward poor range stewardship by allowing an operator to beat down the lands in their lease or allotment and then simply move to another area of public land and over-graze that one too. Many livestock operators and industry representatives commented that they were concerned that ranchers might be removed from their allotments to create an RCA, especially if they have worked hard to keep their allotments in good condition. Several stated that they tentatively support the concept of RCAs, but they expected BLM to clearly explain how RCAs will be created and managed in the proposed rule. Some commenters stated that they had extensive knowledge about the availability of forage within their respective districts and that they were unaware of any area, not presently being grazed, where there was enough forage to create and sustain an RCA.

The Columbia River Basin Inter-Tribal Fish Commission commented that RCAs could provide incentives for permittees to rest their allotments but those RCAs must be held to a higher ecological standard than other grazing allotments. The Tribes commented that healthy range standards should be exceeded, necessary improvements made, and stocking levels decreased on RCAs. The Tribes cited examples in the Columbia Interior Basin, where PACFISH and INFISH plans require higher standards over much of the public land.

Sportsmen for Fish and Wildlife commented that BLM should place allotments and forage in reserve as Reserve Common Allotments, or consider voluntary allotment restructuring to increase the numbers of wildlife on BLM lands.

CBD believes RCAs are unnecessary because BLM already has authority to move ranchers to any allotments that are in personal preference nonuse. It also commented that the existing regulations already provide "alarmingly" broad latitude for all sorts of grazing use through temporary permits, ephemeral use, crossing permits, special permits under 4130, and subleasing.

The Grand Canyon Trust commented that BLM should not adopt rules that assume there are ungrazed allotments available for use as RCAs and that do not provide a mechanism for creating reserve allotments. Mr. Hedden also commented that allotments that are currently managed for uses other than for livestock grazing, for example, environmental restoration or recreation should not be used as RCAs.

The New Mexico Farm and Livestock Bureau expressed the following concerns about RCAs:

- RCAs could result in reduced livestock numbers resulting in loss to the states economic base.
- BLM must clarify how RCAs will be used to restore rangeland to optimum health - including how they are used in response to emergencies and natural disasters like fire and drought.
- NM state water law prohibits extended periods of nonuse without forfeiture of water rights.

- Who holds the water rights on RCAs?
- Will BLM force permittees off their allotments to create RCAs?

A commenter supported the concept of RCAs but is concerned about abuse by "anti-livestock grazing" BLM employees. The commenter said BLM's unstated goal is to reducing livestock on public lands and voluntary programs such as RCAs must consider maintenance of a viable ranch operation for the permittee.

The Wyoming Game and Fish Department commented that RCAs could allow flexibility in distributing livestock; support needed range management projects and, provides adequate post-treatment rest from grazing. The department commented that broad scale implementation of reserve common allotments are a critical and necessary element to a successful grazing management program.

The Western Watersheds Project opposes RCAs because he states no lands that are currently suitable for grazing are currently ungrazed although the vast majority of lands are unsuited to that use. It commented that implementing this proposal would depend on the following:

1. Increasing grazing on lands already grazed and likely degraded by that use.
2. Using pastures being rested from grazing that is contrary to the objectives of the government management plan.
3. Allowing grazing on tracts of currently ungrazed public lands.

The Western Watersheds Project also commented that the unavoidable effects of RCAs would be further ecological degradation of public lands and prolonging an unsustainable land use that is contrary to the mandates and policies of FLPMA and PRIA.

The State of Arizona Game and Fish Department supports the concept of RCAs with the following provisions:

- RCAs should support multiple use objectives.
- RCAs should be available to permittees who are cooperating in range restoration efforts including resting their allotments.
- Permitted use levels and seasons of use on RCAs should be consistent with the maintenance of healthy rangeland conditions and wildlife habitat.
- Terms and conditions for using RCAs should be clearly defined.
- BLM should institute requirements on permittees to implement a rest/rotation system to qualify as eligible to use and RCA

The Idaho Department of Fish and Game commented that they supported the concept of RCAs because the new provision could encourage voluntary relinquishment of permits to establish RCAs. The Department asked BLM to reduce the number of AUMs and spread the remaining number across a larger area.

The NBCA and the PLC commented that they support the concept as long as BLM and the operator agree that range conditions warrant such an action. The groups said they are concerned RCAs could result in a loss of preference AUMs on public lands and asked BLM to consider the following criteria to establish an RCA:

- Allotments for RCAs should be designated for a limited time.
- No more than 10% of AUMs within a district should be in use as RCAs at any one

time.

- All decisions regarding allocations of RCA should involve permittees and grazing boards chartered by state or local governments.
- RCAs will be used to support and maintain the level and integrity of the grazing programs on the allotments within the area.
- BLM should consider creating RCAs from other federal lands not currently used for livestock grazing.
- Permittees should have priority to use RCAs that are located within the grazing district they currently use.
- The preference holder controlling the base property must voluntarily offer their allotments for use as an RCA.
- RCAs must be attached to base property.

The EPA commented that RCAs could aid in the recovery of vegetation and reduce soil compaction from intense grazing on allotments. EPA also recommended that BLM confine grazing to areas that are capable of sustaining grazing and eliminate grazing in areas that are significantly degraded or do not have the adequate amount of resources to support grazing.

The Utah Farm Bureau Federation commented that RCAs are reminiscent of past Federal actions that resulted in grazing being prohibited in Dinosaur National Monument in Utah. The Federation wants RCAs to be developed from vacant or unused allotments. They commented that they would support the provision if it provides flexibility to both the BLM and the livestock producer. The Federation said they would oppose taking existing permits from operators to create an RCA and said BLM must develop a fair and equitable process for allocating forage under this new program.

The Nevada State Grazing Board, District N-3 commented that they support development of RCAs but are concerned that administration changes could affect how the program is managed. The Board asked BLM to ensure that forage used by someone other than the permittee is truly available. The Board urged BLM to consider agreements with other land managing agencies (USFS, BOR) where lands are now grazed and could be used during times of drought or periods of needed rest.

The Sierra Club, Rocky Mountain Chapter commented that although RCAs might benefit over-grazed or damaged rangelands they won't fix the basic problem that BLM allows grazing on lands that are not suitable for grazing.

Forest Guardians, Animal Protection Institute and Sinapu commented that they oppose developing RCAs because they won't end overstocking and overgrazing on lands that are unsuitable for grazing. The groups commented that they are concerned that creating RCAs could create a "sacrifice zone" by damaging grazing lands that are in relatively better condition. The groups commented that BLM should reduce stocking rates on degraded allotments and not subject vacant allotments to the same uses that degraded them in the first place.

ONDA commented that they oppose RCAs because they will create public land grazing commons for federally permittees and recreate a long-recognized problem in public land management known as "the tragedy of the commons." It commented that an abundance of public land grasses encouraged continued overstocking and overuse and there will always be severely damaged allotments struggling to recover. It asked BLM to encourage ranchers to purchase and develop their own private land grass banks and to avail themselves of market system opportunities for their business needs like any other business in America.

The consortium of environmental and conservation groups commented that it is inappropriate for BLM to create RCAs from allotments donated to BLM for the purpose of long-term rest because it may limit future donations. It said potential donors might not want to donate their allotments if it cannot be assured that BLM's goal is long-term rest of those allotments. It wants BLM to "buy out" allotments to create RCAs because grazing costs the taxpayers significantly, would not reduce administration costs and, would not increase resource protection on public lands. It also commented that BLM should address the following issues in the proposed rule:

- How do the regulations limit implementation of this concept?
- How will BLM choose allotments?
- Are there suitable allotments currently in reserve?
- How will BLM account for the loss of benefits these allocations will have to other uses?
- What are BLM's criteria for establishing allotments?
- How will BLM manage these allotments to prevent resource degradation?

The Nature Conservancy commented that it support the concept of RCAs for restoration purposes and cite similar concepts called "grass banking" that they say are used by private landowners to restore large landscapes.

The American Farm Bureau Federation commented that it support the concept of an RCA because they such a program could provide flexibility for BLM and permittees. The Federation They asked BLM to include the following 4 issues in any proposed rulemaking:

- RCAs should be created from vacant allotments, not by removing permittees from their existing allotments.
- RCAs could be created from lands that are not being utilized by a permittee.
- BLM must have the full consent of the permittee and compensate them for the use of their allotment as an RCA.
- BLM must devise a fair and equitable process for allocating forage under the reserve common allotment program.
- BLM should also consider if more than one permittee at a time could use an RCA.

The Public Lands Foundation commented that it supports the concept of RCAs and asked BLM to observe similar programs administered by the Department of Agriculture, The Farm Service Agency's Conservation Reserve Program, and the Grassland Reserve Program for their effectiveness.

The Conservation Roundtable of Billings Montana commented that it supports the concept of RCAs, and asked BLM to implement safeguards to ensure Reserve Common Allotments do not become grazing commons that the TGA is supposed to prevent.

Animal Alliance commented that it opposed developing reserve common allotments because BLM will allow permittees or lessees to move livestock onto areas that were previously allocated exclusively to wildlife.

The consortium of environmental and conservation groups and the Sierra Club commented that RCAs would not be a benefit particularly during droughts.

The County Commissioners of Garfield County, Utah, commented at the New Mexico public

scoping meeting, that BLM should not create RCAs by removing a permittee off an existing allotment.

Southwest Resource Consultants, LLC, commented at the New Mexico public scoping meeting that he is concerned that RCAs might deprive a current permittee of his or her

The Federal Lands Committee and the New Mexico Cattle Growers commented at the New Mexico public scoping meeting that he is concerned about BLM developing RCAs.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that RCAs could do a lot of good for the industry because it would relieve hardships on the small family businesses that make up the industry. It is concerned that RCAs will be taken from active permits at the expense of the operators trying to make a living. It asked BLM to consider acquiring these allotments through attrition or buy-out, other than what is currently practiced, or through some other way that doesn't displace an operator.

A commenter at the Reno public scoping meeting said BLM should consider allowing grazing on lands that are already held in reserve for other purposes. The commenter said the Sheldon and Hart Mountain Antelope Ranges are already reserved and BLM should consider using those and similar areas as RCAs.

A commenter at the Reno public scoping meetings said he supported RCAs and also asked BLM to consider developing areas such as the Sheldon and Hart refuges as RCAs.

The California Farm Bureau commented at the Reno public scoping meeting that he supports RCAs because they could allow a permittee to take on long-term range improvement projects and accomplish these goals as well as provide forage in emergency situations.

A commenter at the Reno scoping meeting that he supports RCAs if they are established by retiring permits and if they are to be grazed during times of harsh conditions as in the case of fire.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meetings that BLM should develop RCAs from vacant and retired allotments.

A commenter asked if a permittee were unable to use his or her allotment because it is degraded, would a permit be revised or revoked instead of moving the grazer to an RCA?

A commenter supported the concept of RCAs as long as BLM only uses vacant allotments or buys out allotments from willing sellers for that specific purpose.

A commenter asked how BLM could create "extra" acres for an RCA when most of the public lands are already in a chronically overused situation?

A commenter said RCAs would not remedy the problem of overstocking or overgrazing public lands with insufficient forage and is concerned that this provision may create a new set of lands sacrificed to replace already degraded lands.

4.2 Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement or supplemental billing under existing service charge authority

Many commenters who opposed the changes we are considering strongly urged BLM to consider raising grazing fees to reflect "fair market value" to graze livestock on public lands.

A commenter asked BLM to determine a grazing fee based on the market value of the available forage and land available and whether multiple-use of public lands is practiced. The

commenter says as a landowner he believes BLM grazing fees are so low they should be considered donations.

A commenter wants BLM to implement a fee schedule for all appropriate and adequate administrative costs for applications and transfers because those who graze livestock on public lands should pay an additional amount beyond administrative costs for all incidental and indirect costs as well as other unanticipated costs.

The Idaho Cattle Association commented at the Reno public scoping meeting that the administrative fees BLM is considering are inappropriate because ranchers spend more time and money on their allotments and improvements than BLM spends to regulate grazing activities. The commenter states that planting and fire suppression, fence maintenance, weed control, and ESA activities protecting water developments, would continue even if there were no grazing and that the public would still demand these values be maintained. He commented that fees must be kept minimal otherwise permittees, who are usually cash poor, would seek to avoid the fees that would lead to less effective range management.

The Western Watersheds Project commented that if BLM were receiving fair market value for grazing privileges, and if FLPMA's fee formula weren't out of date, this rule would not be necessary. It recommended that BLM initiate an analysis of increasing the grazing fee to actual market rates through a bidding process and minimal acceptable rates that are equal to the average cost per AUM of private land grazing leases in each western state.

General comments on issues not addressed in the ANPR and NOI.

The Northwest California Resource Advisory Council (NCRAC) commented that they were disappointed the Department did not consult with RACs prior to the public release of the proposed changes in grazing regulations and that the criteria appears to be from the "top down" and therefore seems contrary to the Secretary's "Four C's" philosophy and commitment to community-based decision making.

The NCRAC raised the following general concerns:

- The proposed changes do not serve conservation. They are coercive in nature rather than being collaborative."
- The proposed changes will make it more difficult to hold grazing permittees accountable for the health of the rangeland they graze.
- The proposed rule will diminish the value of the public natural resource for future generations.
- The proposed rules represent favoritism for one interest group to the detriment of the general public and other stakeholders.
- Current grazing rules have been adjudicated and found in compliance with the TGA and other laws. These new rules will set off a new round of costly litigation.

A commenter said: "I do not like to see public lands and campgrounds full of cattle droppings."

A commenter stated that BLM's current permit renewal process allows anti-grazing factions to interrupt, without just cause, the normal process of renewing a permit. The commenter said that BLM's management plan goals must be based on meeting certain standards and guidelines and improving the health of the public lands for multiple-use.

An environmental group commented that BLM should modify existing regulations so that cancellations by BLM are considered automatic revisions to the applicable land or resource management plans. It stated that BLM should have authority to grant nonuse, until resource

conditions have fully recovered, without a requirement to complete a RMPA.

The Nature Conservancy commented that, although they manage ranching properties in 11 western states, it can't comment on the considered changes until they know the specifics of any changes BLM is considering. It commented that they oppose any changes that would restrict organizations with multiple interests, such as theirs, from qualifying for a grazing permit or lease.

The Public Lands Foundation commented that BLM has not allowed enough time for the 1995 regulatory changes to be effective before considering making these additional changes to the grazing rule. The PLF commented that the 1995 effort was a huge and costly undertaking and asked why BLM is creating a new grazing policy so soon? It stated they have followed BLM's implementation of the 1995 rules and are unaware of any major problems that would necessitate changing the existing rules.

The Public Lands Foundation also commented on the full-force-and-effect provision stating that the land manager must have the authority to make needed changes in grazing use immediately or before the next grazing season to protect and enhance the resource.

The Grand Canyon Trust commented that the goal of the proposed regulations should be to protect and restore the health of public lands and not just perpetuate livestock grazing on public lands. It said the 1995 regulations were subjected to a thorough environmental impact analysis and were determined to be necessary and appropriate for protecting public rangelands.

The Nevada Department of Agriculture "sincerely recommends reverting all grazing regulations to that which existed before Secretary Babbitt. The department said that most of what Secretary Babbitt implemented caused problems, increased litigation for the agency and permittees, increased workloads on agency staff and permittees for meaningless regulatory and NEPA compliance that provide little if any positive effects to the natural resources, livestock industry or any other public multiple use."

The Nevada Department of Agriculture also asked BLM to allow only trained BLM employees to be tasked with environmental monitoring and BLM should not contract out this task. The department is concerned that this consideration will weaken or diminish the importance of monitoring the condition of rangeland health.

The Conservation Roundtable of Billings Montana asked why BLM is drafting new grazing regulations so soon after the huge effort undertaken in 1995? It commented that the proposed changes will result in the "old system" of private control by the privileged over the general public's enjoyment of healthy functioning public lands." It asked BLM to clarify the following elements of the Secretary's 4 Cs concept in the EIS:

- Who is the BLM consulting with?
- What is the consultation about?
- What does BLM mean by "community-based conservation?"
- What is the role of the general taxpaying public in "community-based conservation?"
- Does conservation mean restoration of [public lands] to functioning condition and their multiple uses?

The consortium of environmental and conservation groups commented that BLM must provide definitions for the following new definitions used in BLM's Press Release, and include them in any proposed regulations:

- Sustainable rangelands

- Sustainable ranching
- Working landscapes
- Citizen-based stewardship
- Conservation partners

The Sierra Club and the consortium of environmental and conservation groups want BLM to add the following provisions to any proposed changes to the regulations:

1. Ensure that standards and guides are uniform, consistent, and rigorously applied on all BLM administered lands.
2. Ensure that range health standards are being met. If not, BLM should strengthen and enforce existing criteria.
3. Initiate performance-based contracts. BLM has not adequately and consistently held permit holders accountable and generally renews permits on allotment that do not meet rangeland health standards and guidelines.
4. Develop new performance-based contracts with strong enforcement provisions that include consequences for failing to meet these requirements.
5. Establish performance-based incentives. There must be consequences for not achieving agreed-upon conservation goals.
6. Do not allow stocking increases. When an area has recovered AUMs should be adjusted downward to maintain the health of the land.
7. "Conservation partnerships" are a misnomer if BLM's goal is simply to increase forage production and not to restore declining rangelands.

The Sportsmen for Fish and Wildlife commented that BLM must consider the following issues in any proposed rule changes:

1. Adopt a rule that protects ranchers existing rights and allows a free market place to solve market solution to solve conflicts between wildlife and livestock. This can allow BLM to meet the public demand for increased wildlife populations and increased recreation.
2. Allow allotments and forage or AUMs to be reallocated on a permanent basis for wildlife when a permittee voluntarily relinquishes the grazing preference back to BLM.
3. Do not change the current regulations allowing for non-traditional individuals and corporations that own base property to hold grazing permits.
4. Allow permittees to choose to have their AUMs dedicated either to livestock or game herds.
5. Allow for nonuse and pre-disposition towards re-allocation between the time a willing seller and buyer transaction is completed and the LUP amended.

The Association of Rangeland Consultants (ARC) echoed the comments submitted by the PLC asking BLM to consider addressing "exchange-of-use grazing agreements" citing an earlier provision in the grazing regulations that allowed outside allotment lands to be offered in return for equivalent reduction of the owner's grazing bill. It commented that in an exchange the outside lands were then controlled by BLM who could bill the neighboring permittee for the capacity of those lands, thus allowing a permittee to benefit from his lands outside his allotment, and enable the neighboring permittee to pay for and add the capacity of

those lands to their authorization. It also commented that this trade arrangement was eliminated when the words; "in the same allotment" were inserted in 1995.

ARC asked BLM to consider reinstating "suspended-use" because BLM interprets this current definition as authorizing elimination of all suspended-use from the records at the time of permit renewal based on a full allotment evaluation. It commented that this is an unjustified elimination of the base property qualifications that remains on the books in a suspended status.

ARC also commented that BLM must address the "infamous 'F' clause" in 43 CFR 4130.2(f). They asserted this paragraph denies "due process and allows the BLM manager to determine terms and conditions capriciously and arbitrarily with no recourse." It said that due process and the right of protect should be reinstated in keeping with the regulatory with the regulatory tradition of fairness.

The Montana Farm Bureau at the Billings public scoping meeting. He commented that BLM must clarify its provision pertaining to grazing preference transfers because when those transfers don't impact the environment, but are limited to paper changes, they should not be "subject to the need for documentation."

The California Farm Bureau commented at the Reno public scoping meeting that BLM should consider expanding monitoring efforts to vacant and retired allotments in order to observe long-term trends when cattle are removed because this can provide credible evidence that the land is improving instead of relying on speculation.

The Idaho Cattle Association commented at the Reno public scoping meeting that "BLM should consider performance-based stewardship contracts to demonstrate the validity of local information and input on how to manage range resources. If experience determines this is not a successful undertaking however, it should not reflect badly on the operator. Ranch science is an inexact science and good faith efforts should be considered." It also said BLM should consider fuel load and fire effects when considering what criteria should be used when an operator requests increased permitted use and said decreasing livestock numbers on public lands contributes to increased wildfires.

A commenter at the Reno public scoping meeting that BLM's definitions of citizen-based and community-based decision-making appears to exclude the rest of the public from the rule-making process. She believes this means that decisions will be made between the BLM and the permittee and not include the public.

The New Mexico Cattle Growers Association and the Public Lands Council of New Mexico commented that BLM should reinstate Section 4 permits and reinstate district grazing advisory boards.

The State of Wyoming Game and Fish Department (WGFD) commented that it supports an adequate and meaningful grazing monitoring program and that BLM's current monitoring methods, consistencies in evaluation of monitoring results, and application of monitoring results into future grazing management are key items in support of a successful and defensible grazing management program.

A commenter at the New Mexico public scoping meetings that she is concerned with the impacts of oil and gas development on her grazing allotments because BLM considers improvements made by the Oil and Gas belong to the Oil and Gas developers and Oil & Gas own their leases for as long as they continue to produce. The commenter said ranchers do not own their improvements and their leases expire after 10 years and BLM should to treat ranchers equally with Oil and Gas developers.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that BLM needs to adhere to its current management objectives on wild horses

because although there are too many on the public lands, ranchers are being asked to reduce their AUMs. BLM should reopen the WHBA to address this issue.

The Sierra Club commented that BLM should be looking for ways to reward ranchers who accomplish 100% compliance for standards and guidelines for rangeland health. It said BLM must take action against any permittees who fail to achieve compliance.

A commenter supported community-based conservation and citizen-centered stewardship because local residents have the greatest incentive and desire for conservation of the lands that surround where they live. The commenter wants the Secretary to give precedence to the comments of those who live in public land states who are most qualified to resolve problems.

This commenter also wants BLM to improve its business practices through local collaboration and seeking agreement within the communities and counties that have generated solid plans to enhance land health and sustainability. They commented that the same practices should be given ample opportunity to succeed through more simplified business practices and land health and wildlife populations are enhanced by proper grazing that is compatible with controlled recreation and proper planning.

Several commenters asked BLM to address the following issues in the proposed rule:

- How to deal with noxious weed infestation.
- How to deal with after affects of catastrophic wildfires on public lands.
- Increasing the listing of T&E species.
- Implement a program to voluntarily buy-out grazing permits.
- Raise the current grazing fees to reflect market-based economics.

A commenter said court orders were the only means to justify a change to the existing regulations. The commenter also stated that BLM should provide complete details and take full public comment, not just from industry representatives, before changes the grazing regulations.

A commenter recommended that BLM develop an incentive system, such as reducing grazing fees, to reward livestock operators for "doing a good job."

The American Farm Bureau Federation commented that BLM should consider the following issues in its draft proposed regulation changes:

1. BLM should consider ways to further streamline procedures if certain actions are identified as CXs in the burdensome NEPA processes. They cite an example of permit transfers when a base property changes ownership or control and there are no deviations to the terms or conditions for the duration of the existing permit. They state that these actions have little or no environmental impacts and there is no reason that these actions should be subject to NEPA.
2. Required Endangered Species Act Section 7 consultations can cause livestock permittees major problems and permittees should be included in these consultations with USFWS instead of having their livelihoods affected in closed-door policy decisions.
3. BLM should eliminate the sub-leasing surcharge imposed by the 1995 regulations.

The Taxpayers for Common Sense commented that fees BLM charges for livestock grazing on public lands constitute an inappropriate expense for taxpayers and do little to encourage an individual's stewardship of grazing lands.

NCBA and PLC recognize the Secretary's authority to apply a surcharge. The groups believe

that adding a surcharge creates an unnecessary workload to the BLM's administration of permits and leases. They also commented that the surcharge creates an unfair financial and bureaucratic burden and prevents many young ranchers from being able to participate in Federal land grazing operations. They believe that elimination of the surcharge will help the BLM's directive to develop grazing policies that encourage family ranches to stay on the land and continue to contribute to local economies.

A commenter asked BLM to change the regulations at section §4130.7(a) to read as follows:

(a) The permittee or lessee shall own and be responsible for the management of livestock that graze the public land under a grazing permit or lease.

ONDA commented that BLM did not mention permit retirements or relinquishment that, the group claims, is of considerable interest to conservationists, permittees, and BLM staff. ONDA does not agree with the Solicitor's opinion that a "chiefly valuable" determination must be made before BLM makes a land use decision allowing for the retirement of a grazing permit. It commented that if DOI intends to act in accordance with the Solicitor's memorandum, the chiefly valuable determination must occur on each and every acre of land within the land use planning area every time BLM develops or revises a resource management plan. It said that if BLM adopts this policy it could balance competing resource values to ensure that public lands are managed in a manner that best meets the needs of the American people.

NCBA and PLC want BLM to remove the term "interested public" from the grazing regulations because this broad level of public participation is more appropriate to the planning process where decisions regarding resource allocations are made.

NCBA and PLC want BLM to incorporate "affected interest" as it was prior to 1995 to mean a party who has established in writing that they may be materially and economically impacted by an agency decision. They believe that permit administration involving the contractual relationship between the grazing permittee and the BLM should involve only other permittees within the same allotment would normally qualify as affected interests.

NCBA and PLC want BLM to limit the definition of "interested public" to mean a person or organization that has submitted a written request to the BLM to be provided an opportunity to be involved in the Land Use Plan for a BLM Field Area and whom BLM has determined to be an "interested public." The groups want applicants to provide information to the BLM demonstrating how their participation in the LUP development process would provide information and/or expertise that would otherwise not be available to the BLM.

NCBA and PLC also want BLM to amend §4120.2 sections (a) and (c) to consider changing the definition of the term "allotment" to re-instate the phrase "Boards were established" that was removed in the 1995 changes. The groups commented that this change is justified by the requirement still contained in Section 8 of the PRIA whereby the Secretary is required to consult, cooperate and coordinate with land owners involved in any boards created by states having lands or responsibilities for managing lands within an area to be covered by an allotment management plan. PLC justifies this amendment because, they believe, when Grazing Boards were eliminated BLM and livestock grazers lost an important tool for resolving conflicts and cooperating in resource stewardship.

The New Mexico Farm and Livestock Bureau commented that BLM should remove "interested public" from the regulations because the 1995 regulations allowed anyone to participate in consultations between BLM and a permittee or lessee regarding grazing management.

The New Mexico Farm and Livestock Bureau wants BLM to eliminate the "full force and effect" provision.

Section §4120.5-1 paragraph (c) [It probably intended to reference section 5120.5-2]

PLC wants BLM to add a paragraph (c) to section 4120.5-1 as follows:

"BLM will participate with state, local, or county officials who establish grazing boards under their jurisdiction and if requested, provide periodic opportunities for members of these grazing boards to review and provide comments to BLM on range improvement and allotment management plan programs within their area of jurisdiction."

NCBA and PLC asked BLM to amend the conversion ratio for sheep from 5:1 to 7:1 when billing for AUMs. They comment that the 5:1 ratio for sheep is based on data collected in Utah between 1949 and 1967 and by 1991, and later in 1995, new standards were published that showed a higher ratio for sheep AUMs would be appropriate.

NCBA and PLC comment that their review of BLM's grazing decisions over the past 10 years shows little actual data from "state of the art" rangeland studies. They also believe the IBLA has incorrectly applied the burden of proof to the appellant instead of the BLM which, they assert, is required by the Administrative Procedure Act. They comment that when decisions are not suspended, the permittee/lessee could be put out of business while BLM is pending a final disposition.

NCBA and PLC comment that BLM should revise the language at Section 4160.3 Full Force and Effect Decisions & Petitions for Stay of Decisions to read as follows:

"When a permittee or lessee generates a timely appeal in response to a BLM decision, that decision will not be effective pending a final agency decision following a hearing on the record. While the appeal is pending the terms and conditions of the existing or prior permit will be in effect."

NCBA and PLC comment that BLM should add the following language to Section 4160. Hearings and Appeals:

"If BLM can show sufficient justification to determine that the authorized grazing use is contributing to irreparable resource damage, BLM will consult with the permittee or lessee, and the state having responsibility over those lands and other land owners. BLM may then declare an emergency and place the decision in effect before the hearing or final administrative decision. The decision should be effective for the 30-day period provided for filing an appeal.

Situations that justify a declaring an emergency would include the following considerations:

- (i) Relative harm to the parties if the decision is effective pending an appeal
- (ii) The likelihood of BLM's success on the merits
- (iii) The likelihood of immediate and irreparable harm if the decision is not effective pending appeal
- (iv) Does the public interest favor placing the decision in effect pending the decision pending appeal?"

Section 4130.1-1 Filing applications

NCBA and PLC asked BLM to amend this section, which it refers to as "Authorizing Grazing Use" to read as follows:

"A positive response from a permittee or lessee to BLM's offer of an annual grazing license in the last year of a multi-year term permit or lease period to continue the livestock grazing program on an allotment or lease past the term of the current permit or lease shall be considered by BLM as an application to renew a term grazing permit or lease. If a permittee or lessee desires to appeal any of the terms and conditions in a permit or lease renewal

offered to him or her by the BLM, the action of an appeal shall be considered an application for renewal and the permit or lease shall be extended under the existing terms and conditions until such time as a final action is adjudicated."

Section §4130.6-1 Exchange of Use NCBA and PLC want BLM to insert the following language into §4130.6-1:

"BLM will calculate the total allotment/lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by person qualified as professional rangeland managers." They also ask that the phrase "... in the same allotment" be removed from the existing regulations in this same section.

Section §4130.1-2 Conflicting Applications

NCBA and PLC asked that BLM remove the following language in paragraph (d) of section §4130.1-2:

"Public ingress or egress across privately owned or controlled land to public land should be removed as consideration in allocating AUM."

NCBA and PLC commented that the above existing language constitutes "blackmail" because it allocates Federal forage to applicants for that forage. The group commented that it is irrelevant whether a person currently or in the future will grant public access to private lands because it is related to whether or not that person is the best steward of Federal forage.

Section §4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

NCBA and PLC asked BLM to amend this section by transferring the entire Section §4180 to BLM's Planning Regulations and transferring authority to the BLM. They commented that Section 4180 directs BLM to conduct multiple use planning exercises at the watershed level and is intended to guide BLM in conducting on-the-ground livestock management activities but the regulations do not provide those management directives. They also want BLM to rewrite the Planning regulations.

NCBA and PLC asked BLM to address monitoring by re-naming section 4180.2 "Monitoring" and developing language to develop a scientifically-based short and long term field-level monitoring program in consultation with and participation from permittees and lessees.

The Western Watersheds Program commented that his group knows of hundreds of grazing allotments that are failing the most minimal of environmental health measures because of grazing on BLM administered lands.

A commenter said BLM should remove requirements in paragraph (b) of 4180.1 because there are no field methods currently available to determine energy flow and nutrient cycling and BLM can't make an accurate determination based on these functions.

The County Commissioners of Chaves County in Roswell, New Mexico asked BLM to reverse the current Full Force and Effect provisions to the pre-1995 standards that allowed the permittee to exhaust all appeals prior to removing livestock from the allotment because the current regulations do not recognize due process including a full disclosure of the facts related to the decision, equal representation and the rights of the accused to be assumed [sic] innocent until proven guilty.

A commenter said BLM should replace "interested public" with "affected interest" wherever it appears in the regulations. He stated that local BLM employees' workloads are horrendous because BLM is asking people with radical agendas against multiple-use to participate in the everyday BLM activities. He stated that this detracts from BLM's ability to manage the

resources.

The Idaho Department of Fish and Game (IDFG) commented that designing grazing regulations that make it easier for permittees to voluntarily opt for nonuse or relinquish a permit will allow BLM to spread remaining livestock over a larger area and reduce the number of animals grazing an allotment thereby allowing the range to be rested or rehabilitated. The IDFG commented that this would benefit permittees, improve rangeland health, and improve fish and wildlife habitats.

NCBA and PLC commented that BLM should continue periodic evaluations of rangeland resources on existing locations in a manner that ensures continuity over time and BLM should ensure that all monitoring data collected on BLM lands is made available in allotment files to use in evaluating trends in resource conditions over time.

The Public Lands Foundation commented that BLM's key to successful rangeland management should be in their capacity to monitor changes in vegetation and soil conditions, and make appropriate adjustments in use.

A commenter at the Reno scoping meetings said BLM needed to address noxious weeds, catastrophic wildfires, and improve basic monitoring. The commenter said BLM is only considering protecting 10% to 15% of permittees who are either poor managers or unsuccessful at trying to make a living on public rangelands that are not suitable for livestock grazing. The commenter wants BLM to develop incentives so that permittees who successfully manage grazing to meet land health objectives pay less. Permittees who fail to meet these objectives will pay more in the short term and lose their permits in the long term. The commenter said BLM needed to institute a voluntary buy-out program for permittees who can't make a living on marginal rangeland.

The consortium of environmental and conservation groups commented that reverting to the pre-1995 policies is illegal because it prevents BLM from fulfilling its obligations under FLPMA and is inconsistent with the agency's stated goal of conservation. It commented that BLM should only restrict monitoring if the allotment is in nonuse or until BLM can meet its monitoring objectives.

It recommended that BLM reinstate Grazing Boards and provide them with these reports so they can be subjected to peer review. It also asked BLM to require periodic reports, in consultation with the permittee, to determine whether the data from monitoring and field observations show that resource management objectives are being met.

NCBA and PLC asked that BLM develop a new policy, in consultation with livestock operators and land grant institutions, to consider how to best address resource management objectives for wild life, T&E species, and impacts from recreational users at the allotment level. It believes these objectives are important for short and long term monitoring programs that are founded in current and historical quantitative vegetative data having the technical ability to determine if resource objectives are being met.

Animal Alliance opposed altering the administrative appeals process if it would be more difficult to sue than what is currently required by the Federal rules. It commented that the proposed rule would narrow the definition of "legally cognizable interests" and in effect, reduce the public's ability to appeal grazing administration and policy decisions.

Great Old Broads for Wilderness, commented that BLM's fee formula should reflect current market rates for non-Federal grazing lands because the current grazing fee is 10 times less than the open market rate. It said this a dereliction of duty by the agency.

The South Dakota Department of Game, Fish, and Parks commented that BLM should expand its management objectives to include all its lands and consider monitoring as a means to assess the effects of management actions. The department also commented that if BLM

cannot adequately manage small tracts of public land BLM should consider land exchanges as a way to create larger, easier to manage, allotments. The department commented that increased monitoring by BLM could identify at-risk lands and prevent them from degrading to a state where they need extensive restoration.

The CBD commented that BLM should delete Section §4130.8 from the regulations because the fee fails to track market rates for livestock. It commented that BLM's fees are 10 times less than the average westwide market rental of unirrigated rangeland and BLM's current fee formula should be eliminated and replaced with a competitive bidding process.

A commenter said "drive-by" monitoring and monitoring only when a permittee/lessee is renewing a permit or lease are not sufficient. The commenter said grazing practices should be adjusted annually to assure that the land is improving in condition and health. The commenter said that if BLM does not have adequate resources to properly monitor an allotment, that allotment should not be used until adequate funds and resources are available to manage it. The commenter said BLM should conduct an economic analysis of what constitutes a well-funded range conservation effort and use the information to inform Congress of the cost and effect of neglecting the public land.

An environmental group commented that BLM should have authority to grant nonuse for an entire 10 years or longer if the resource needs that much time to recover and BLM should be able to do this without having to do land or resource management plan amendments. The group also commented that BLM should consider allotment cancellations to be automatic revisions to the applicable land or resource management plan.

CBD commented that BLM should prohibit any ephemeral grazing on public lands.

A member of the Northern California Resource Advisory Council commented that BLM must conduct effective monitoring to assure that the goals of the management plan are being met.

The Sky Island Alliance commented that grazing permits and leases should be open to competitive bidding as follows:

Bids are for the fee paid per AUM of actual forage for that period of the permit or lease.

- Reserve price on permits should be no less than 50% of the current average of private market rental rates for that state according to the National Ag Statistics Service.
- The highest bid from a qualified stockowner establishes the fair market value for that permit.
- Incumbent permittees offered first option to renew at highest bid.
- If incumbent declines, bidding process reopened until willing permittee is identified.
- No qualifying bids received results in allotment cancellation and closed to grazing.

5.0 General comments on issues not addressed in the ANPR and NOI

The Northwest California Resource Advisory Council (NCRAC) commented that it was disappointed the Department did not consult with the RACs before the public release of the proposed changes in grazing regulations and that the criteria seems to be from the "top down" and, therefore, seems contrary to the Secretary's "Four C's" philosophy and commitment to community-based decision making.

The NCRAC raised the following general concerns:

- The proposed changes do not serve conservation. They are coercive in nature rather than being collaborative.
- The proposed changes will make it more difficult to hold grazing permittees accountable for the health of the rangeland they graze.
- The proposed rule will diminish the value of the public natural resource for future generations.
- The proposed rules represent favoritism for one interest group to the detriment of the general public and other stakeholders.
- Current grazing rules have been adjudicated and found in compliance with the TGA and other laws. These new rules will set off a new round of costly litigation.

A commenter said, "I do not like to see public lands and campgrounds full of cattle droppings."

A commenter stated that the BLM's present permit renewal process allows antigrazing factions to interrupt, without just cause, the normal process of renewing a permit. The commenter said that BLM's management plan goals must be based on meeting certain standards and guidelines and improving the health of the public lands for multiple uses.

An environmental group commented that the BLM should modify existing regulations so that cancellations by BLM are considered automatic revisions to the applicable land or resource management plans. It stated that the BLM should have authority to grant nonuse, until resource conditions have fully recovered, without a requirement to complete a RMPA.

The Nature Conservancy commented that, although it manages ranching properties in 11 western States, it can't comment on the considered changes until the specifics of any changes the BLM is considering are made known. The Conservancy commented that it opposes any changes that would restrict organizations with multiple interests, such as theirs, from qualifying for a grazing permit or lease.

The Public Lands Foundation commented that BLM has not allowed enough time for the 1995 regulatory changes to be effective before considering making these additional changes to the grazing rule. The PLF commented that the 1995 effort was a huge and costly undertaking and asked why BLM was creating a new grazing policy so soon. The PLF stated it had followed BLM's implementation of the 1995 rules and was unaware of any major problems that would necessitate changing the existing rules.

The Public Lands Foundation also commented on the full-force-and-effect provision, stating that the land manager must have the authority to make needed changes in grazing use immediately or before the next grazing season to protect and enhance the resource.

The Grand Canyon Trust commented that the goal of the proposed regulations should be to

protect and restore the health of public lands and not just perpetuate livestock grazing on public lands. It said the 1995 regulations were subjected to a thorough environmental impact analysis and were deemed necessary and appropriate for protecting public rangelands.

The Nevada Department of Agriculture "sincerely recommends reverting all grazing regulations to that which existed before Secretary Babbitt." The department said that "most of what Secretary Babbitt implemented caused problems, increased litigation for the agency and permittees, and increased workloads on agency staff and permittees for meaningless regulatory and NEPA compliance that provide little or no positive effects on the natural resources, livestock industry, or any other public multiple use."

The Nevada Department of Agriculture also asked the BLM to allow only trained BLM employees to be tasked with environmental monitoring and to not contract out this task. The department is concerned that this consideration will weaken or diminish the importance of monitoring the condition of rangeland health.

The Conservation Roundtable of Billings Montana asked why the BLM is drafting new grazing regulations so soon after the huge effort undertaken in 1995. It commented that the proposed changes would result in the "old system" of private control by the privileged over the general public's enjoyment of healthy functioning public lands." It asked the BLM to clarify the following elements of the Secretary's Four C's concept in the EIS:

- Who is the BLM consulting with?
- What is the consultation about?
- What does BLM mean by "community-based conservation?"
- What is the role of the general taxpaying public in "community-based conservation?"
- Does conservation mean restoration of [public lands] to functioning condition and their multiple uses?

The consortium of environmental and conservation groups commented that the BLM must provide definitions for the following new definitions used in BLM's Press Release, and include them in any proposed regulations:

- Sustainable rangelands
- Sustainable ranching
- Working landscapes
- Citizen-based stewardship
- Conservation partners

The Sierra Club and the consortium of environmental and conservation groups want the BLM to add the following provisions to any proposed changes to the regulations:

Section 4130.1-1 Filing applications

The NCBA and PLC asked the BLM to amend this section, which it refers to as "Authorizing Grazing Use" to read as follows:

"A positive response from a permittee or lessee to BLM's offer of an annual grazing license in the last year of a multiyear term permit or lease period to continue the livestock grazing program on an allotment or lease past the term of the current permit or lease shall be considered by BLM as an application to renew a term grazing permit or lease. If a permittee or lessee desires to appeal any of the terms and conditions in a permit or lease renewal offered to him or her by the BLM, the action of an appeal shall be considered an application

for renewal and the permit or lease shall be extended under the existing terms and conditions until such time as a final action is adjudicated."

Section §4130.6-1 Exchange of Use

The NCBA and PLC want the BLM to insert the following language into §4130.6-1:

"BLM will calculate the total allotment/lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by person qualified as professional rangeland managers." They also ask that the phrase "... in the same allotment" be removed from the existing regulations in this same section.

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The NCBA and PLC asked the BLM to amend this section by transferring the entire Section 4180 to BLM's Planning Regulations and transferring authority to the BLM. They commented that Section 4180 directs BLM to conduct multiple-use planning exercises at the watershed level and is intended to guide BLM in conducting on-the-ground livestock management activities but the regulations do not provide those management directives. They also want BLM to rewrite the Planning regulations.

The NCBA and PLC asked the BLM to address monitoring by renaming section 4180.2 "Monitoring" and developing language to develop a scientifically based short- and long- term field-level monitoring program in consultation with and with participation from permittees and lessees.

The Western Watersheds Program commented that it knows of hundreds of grazing allotments that are failing the most minimal of environmental health measures because of grazing on BLM-administered lands.

A commenter said the BLM should remove requirements in paragraph (b) of §4180.1 because there are no field methods presently available to determine energy flow and nutrient cycling and the BLM can't make an accurate determination based on these functions.

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manage the resources.

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cannot adequately manage small tracts of public land BLM should consider land exchanges as a way to create larger, easier to manage, allotments. The department commented that increased monitoring by BLM could identify at-risk lands and prevent them from degrading to a state where they need extensive restoration.

The CBD commented that BLM should delete Section 4130.8 from the regulations because the fee fails to track market rates for livestock. It commented that BLM's fees are 10 times less than the average west-wide market rental of unirrigated rangeland and BLM's current fee formula should be eliminated and replaced with a competitive bidding process.

A commenter said "drive-by" monitoring and monitoring only when a permittee or lessee is renewing a permit or lease are not sufficient. The commenter said grazing practices should be adjusted annually to assure that the land is improving in condition and health. The commenter said that if BLM does not have adequate resources to properly monitor an allotment, that allotment should not be used until adequate funds and resources are available to manage it. The commenter said BLM should conduct an economic analysis of what constitutes a well-funded range conservation effort and use the information to inform Congress of the cost and effect of neglecting the public land.

An environmental group commented that BLM should have authority to grant nonuse for an entire 10 years or longer if the resource needs that much time to recover and BLM should be able to do this without having to do land or resource management plan amendments. The group also commented that BLM should consider allotment cancellations to be automatic revisions to the applicable land or resource management plan.

CBD commented that BLM should prohibit any ephemeral grazing on public lands.

A member of the Northern California Resource Advisory Council commented that BLM must conduct effective monitoring to assure that the goals of the management plan are being met.

The Sky Island Alliance commented that grazing permits and leases should be open to competitive bidding as follows:

- Bids are for the fee paid per AUM of actual forage for that period of the permit or lease.
- Reserve price on permits should be no less than 50% of the current average of private market rental rates for that state according to the National Ag Statistics Service.
- The highest bid from a qualified stockowner establishes the fair market value for that permit.
- Incumbent permittees offered first option to renew at highest bid.
- If incumbent declines, bidding process reopened until willing permittee is identified.
- No qualifying bids received results in allotment cancellation and closed to grazing.

D. & FIS. A. 1. D.

Draft EIS - Appendix D

APPENDIX D

ADVANCE NOTICE OF PROPOSED RULEMAKING

[Federal Register: March 3, 2003 (Volume 68, Number 41)]

[Notices]

[Page 10030-10032]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr03mr03-85]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-1020-24 1A]

RIN 1004-AD42

Grazing Administration--Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the proposed amendments of the Bureau of Land Management's grazing administration regulations and announcement of public meetings.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on amending the regulations governing BLM livestock grazing administration on public lands. The current rule, issued in 1995, requires amendment to comply with court decisions, provide greater flexibility to managers and permittees, improve existing administrative procedures and business practices, and promote conservation of public lands. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs as well concerns regarding possible changes to the Grazing Administration Program. The public scoping process will identify issues and develop criteria in the context of the needs and interests of the public. We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define possible changes to the Grazing Administration Program.

DATES: You must submit your comments by May 2, 2003. BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see ADDRESSES). In addition, BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS. The public scoping meetings will be held

[[Page 10031]]

on the following dates at the specified locations and times:

Location	Date and time	Address of meeting	Contact person
Billings, Montana	March 18, 2003, 6-10 p.m.	Holiday Inn Grand, Montana, 550 Midland Road Billings, MT 59101	Mary Apple 406-896-5258
Reno, Nevada	March 20, 2003, 6-10 p.m.	Reno Sparks Convention Center 4590 S. Virginia St. Reno, NV 89502	JoLynn Worley 775-861-6515
Albuquerque, New Mexico	March 25, 2003, 6-10 p.m.	Hilton of Albuquerque 1901 University Blvd. NE. Albuquerque, NM 87102	Kitty Mulkey 505-438-7511
Washington, DC	March 27, 2003, 1-5 p.m.	Courtyard By Marriott (General Scott Room) 1600 Rhode Island Ave., NW. Washington, DC 20036	Tom Gorey 202-452-5137

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern
States Office, 7450 Boston Boulevard, Springfield, Virginia 22153
Attention: RIN 1004-AD42

Personal or messenger delivery: 1620 L Street, NW., Room 401,
Washington, DC 20036. Direct internet response:

<http://www.blm.gov/nhp/news/regulatory/index.html>

or go to BLM's external homepage at

<http://www.blm.gov/nhp/index.htm> and click on the link.

You may also comment via email at the following address: WOCComment@blm.gov.

We intend this address for use by those who want to

keep their electronic comments confidential. Please submit email comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attn: AD42" and your name and return address in your email message. You may examine documents pertinent to this proposal at the L Street address. Comments, including names and street addresses of respondents, will be available for public review on the Internet address above and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information relating to the grazing program or the substance of the regulations to be proposed, contact Kenneth Visser at (202) 452-77434. For information relating to the rulemaking process, contact Cynthia Ellis at (202) 452-5012. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION: In this issue of the Federal Register, BLM is also publishing an advance notice of proposed rulemaking on the changes we are considering making to the regulations governing BLM's Grazing Administration Program. BLM is committed to making the changes to reflect the Secretary's "4C's" philosophy of "consultation, cooperation, and communication all in the service of conservation." Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315, 315a-315r), the regulations have been periodically modified, revised and updated. The last major revision effort culminated when BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The changes BLM is considering would encourage partnerships in public land stewardship and establish new options for BLM and rangeland users in the administration and management of public lands. Our goals are to:

- (1) Enhance community-based conservation and citizen-centered stewardship;
- (2) Improve BLM business practices; and
- (3) Provide greater flexibility for the manager and the permittee.

Description of Information Requested

BLM is committed to carrying out the Secretary's objectives and the Rangeland Management Program established by the Federal Land Policy Management Act of 1976 (43 CFR 1740), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901-1908), and the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315, 315a-315r). We specifically request comments on the topics we are considering for the proposed rule, as they relate to the EIS. These topics include, but are not limited to, the following (the listing is identical to that which appears in the advance notice of proposed rulemaking):

A. Definitions.

We are considering revising or creating definitions of the following terms: Active use; Authorized use; Base property; Grazing lease; Grazing permit; Grazing preference or Preference; Livestock kind or kind of livestock; Monitoring; Reserve common allotment.

B. We are considering changing regulations to clarify current requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.
- Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.
- Clarifying the provisions addressing grazing preference transfers.
- Reinstating an earlier provision that BLM and the permit holder may share title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.
- Clarifying that BLM will follow state law with respect to the acquisition of water rights.
- Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations.

[[Page 10032]]

- Clarifying which non-permit related violations BLM may take into account in penalizing a permittee.
- Considering ways to streamline the grazing decision appeal process.
- Extending the time period that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

- Creating provisions re-emphasizing consideration of social, economic, and cultural impacts, in addition to the ecological impacts, of Federal actions to ensure compliance with the National Environmental

Policy Act.

- Requiring a permittee/lessee to apply to renew a permit or lease.
- What criteria BLM will consider before approving increases in permitted use.
- Considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards.

D. We are considering adding the following new provisions to the regulations.

- Establishing and administering a new concept called "Reserve Common Allotments" (RCA). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary non-renewable basis to permittees participating in restoration on their allotments.
- Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement/supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.

E. We also plan to make minor revisions to correct typographical errors and to make technical changes to improve the clarity of the rule. One change we will make is to remove references to "conservation use" permits to reflect the decision in *Public Lands Council v. Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), rev'd in part and aff'd in part, 167 F.3d 1287 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000).

Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at <http://web.blm.gov/internal/wo-200/wo-220/index.html>.

Dated: January 17, 2003
Rebecca W. Watson,
Assistant Secretary of the Interior.
[FR Doc. 03-4934 Filed 2-28-03; 8:45 am]

BILLING CODE 4310-84-P

The Advance Notice of the Proposed Rulemaking, as it appeared in the Federal Register, can be found at the following link:

http://www.blm.gov/nhp/news/regulatory/ANPR_4100/4100-ANPR.html

Actual Text is below:

[Federal Register: March 3, 2003 (Volume 68, Number 41)]

[Proposed Rules]

[Page 9964-9966]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr03mr03-29]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 4100

[WO-220-1020-24 1A]

RIN: 1004-AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking for proposed amendments to the BLM's Grazing Administration Regulations and announcement of public meetings.

SUMMARY: The Bureau of Land Management (BLM) requests comments and suggestions to assist it in amending our regulations governing how the BLM administers livestock grazing on public lands. The present regulations, issued in 1995, require amendment to comply with court decisions, provide greater flexibility to managers and permittees, improve existing administrative procedures and business practices, and promote conservation of public lands. The BLM encourages the public to participate in planned public meetings and to provide comments and suggestions to help it clearly define needed changes to the Grazing Administration Program.

DATES: You must submit your comments by May 2, 2003. The BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see ADDRESSES). See the SUPPLEMENTARY INFORMATION section for the dates of the public meetings.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153, Attention: RIN 1004-AD42.

Personal or messenger delivery: 1620 L Street NW, Room 401, Washington, DC 20036.

Direct Internet response: www.blm.gov/nhp/news/regulatory/index.htm or go to BLM's external Home page at <http://www.blm.gov/nhp/index.htm> and click on the link.

You may also comment via email to WOCComment@blm.gov. This address may be used by those who wish to keep their electronic comments confidential and for those who are unable, for whatever reason, to use the Internet site. Please submit email comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attn: AD42" and your name and return address in your email message.

You may examine documents pertinent to this proposal at the L Street address. Comments, including names and street addresses of respondents, will be available for public review on the Internet address above and may be published as part of the EIS. Individual respondents may request confidentiality.

FOR FURTHER INFORMATION CONTACT: Kenneth Visser at 202-452-7743, for information relating to the grazing program or the substance of the regulations to be proposed, or Ted Hudson at 202-452-5042 or Cynthia Ellis at 202-452-5012 for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, 7 days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. BACKGROUND

III. Description of Information Requested

I. Public Comment Procedures

Your written comments should:

Location

	Date and time	Address of meeting	Contact person
Billings, Montana	March 18, 2003, 6–10 p.m.	Holiday Inn Grand Montana, 550 Midland Road, Billings, MT 59101	Mary Apple(406) 896-5258
Reno, Nevada	March 20, 2003, 6–10 p.m.	Reno Sparks Convention Center, 4590 S. Virginia St., Reno, NV 89502	JoLynn Worley(775) 861-6515
Albuquerque, New Mexico	March 20, 2003, 6–10 p.m.	Hilton of Albuquerque, 1901 University Blvd., N.E., Albuquerque, NM 87102	Kitty Mulkey(505) 438-7511
Washington, D.C.	March 27, 2003, 1–5 p.m.	Courtyard By Marriott (General Scott Room), 1600 Rhode Island Ave., NW, Washington, DC 20036	Tom Gorey(202)452-5137

The sites for the public meetings are accessible to individuals with physical impairments. If you need a special accommodation to participate in one or all of the meetings (e.g., interpreting service, assistive listening device, or materials in alternative format), please

notify the contact person listed in this notice no later than 2 weeks before the scheduled meeting. Although the BLM will attempt to meet all requests received, the requested accommodations may not always be available.

If you plan to present a statement at the meetings, you will be asked to sign in before the meeting starts and identify yourself clearly for the record. Your speaking time at the meeting(s) will be determined before the meeting(s), based on the number of persons wishing to speak and the approximate time available for the session. You will be provided at least 3 minutes to speak.

If you do not wish to speak at the meetings but you have views, questions, and concerns about regulations for the BLM's Range Management Program, you may submit written statements for inclusion in the public record at the meeting. You may also submit written comments and suggestions regardless of whether you attend or speak at a public meeting. See the ADDRESSES section of this notice for where to submit comments.

II. Background

In this issue of the Federal Register, the BLM is also publishing a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on the changes it is considering making to the regulations governing BLM's Grazing Administration Program. The BLM is committed to making the changes to reflect the Secretary's "Four C's" philosophy of "consultation, cooperation, and communication all in the service of conservation." The BLM is issuing this Advance Notice of Proposed Rulemaking and the NOI to give the public and interested parties early information about the proposed action, the potential range of alternatives, and the nature of impact analysis being considered in the EIS. The BLM will hold meetings during which the public will be able to comment on the scope, proposed action, and possible alternatives BLM should consider when drafting the proposed rule. The BLM seeks comments on this Advance Notice of Proposed Rulemaking.

Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a-315r), the regulations have been periodically modified, revised, and updated. The last major revision effort culminated when the BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The changes the BLM is considering would encourage partnerships in public land stewardship and establish new options for BLM and rangeland users in the administration and management of public lands. The BLM's goals are to:

1. Enhance community-based conservation and citizen-centered stewardship;
2. improve BLM business practices; and
3. provide greater flexibility for the manager and the permittee.

III. Description of Information Requested

The BLM is committed to carrying out the Secretary's objectives and the Rangeland Management Program established by the Federal Land Policy Management Act of 1976 (43 CFR 1740), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901-1908), and the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a-315r). We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define needed changes in the Grazing Administration Program. We specifically are requesting comments on the topics we are considering for the proposed rule. These include, but are not limited to, the following:

A. Definitions—we are considering revising or creating definitions of the following terms:

Active use

Authorized use

Base property

Grazing lease

Grazing permit

Grazing Preference or Preference

Livestock kind or kind of livestock

Monitoring

Reserve common allotment

B. We are considering changing regulations to clarify present requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.
- Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.
- Clarifying the provisions addressing grazing preference transfers.
- Reinstating an earlier provision that BLM and the permit holder may share title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.
- Clarifying that BLM will follow state law with respect to the acquisition of water rights.
- Examining whether the BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations.
- Clarifying which nonpermit-related violations the BLM may take into account in penalizing a permittee.
- Considering ways to streamline the grazing decision appeal process.
- Extending the time that the BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

- Creating provisions reemphasizing consideration of social, economic, and cultural effects, in addition to the ecological effects, of Federal actions, to ensure compliance with the National Environmental Policy Act.
- Requiring a permittee or lessee to apply to renew a permit or lease.
- What criteria the BLM will consider before approving increases in permitted use.
- Considering whether to amend the provision stating when the BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards.

D. We are considering adding the following new provisions to the regulations.

- Establishing and administering a new concept called "Reserve Common Allotments" (RCA). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary nonrenewable basis to permittees participating in restoration on their allotments.
- Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement or supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.

E. We also plan to make minor revisions to correct typographical errors and to make technical changes to improve the clarity of the rule. One change we will make is to remove references to "conservation use" permits to reflect the decision in *Public Lands Council v. Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), rev'd in part and aff'd in part, 167 F.3d 1287 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000).

Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at <http://web.blm.gov/internal/wo-200/wo-220/index.html>.

Dated: January 17, 2003.

Rebecca W. Watson, Assistant Secretary of the Interior.

[FR Doc. 03-4933 Filed 2-28-03; 8:45 am]

BILLING CODE 4310-84-P

APPENDIX E

NOTICE OF INTENT TO PREPARE AN EIS

Draft EIS - Appendix E

The enclosed version of the Notice of Intent to Prepare an EIS for the proposed

project will be published in the Federal Register.

Enclosed is a copy of the Notice of Intent to Prepare an EIS for the proposed

project.

(Page 1 of 1)

From the Federal Register Online via GPO & SRS: <http://www.gpo.gov/srs/>

[Docket ID: 2003-01-4934]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(703) 251-4300

2003-01-4934

Office of Administration - Bureau of Land Management

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Intent to Prepare an EIS for the proposed project. The proposed project is the construction of a new road through the proposed project area. The proposed project is the construction of a new road through the proposed project area. The proposed project is the construction of a new road through the proposed project area.

SUMMARY: The Bureau of Land Management (BLM) is the lead agency for the proposed project. The proposed project is the construction of a new road through the proposed project area. The proposed project is the construction of a new road through the proposed project area. The proposed project is the construction of a new road through the proposed project area.

FOR FURTHER INFORMATION CONTACT: See the enclosed EIS-01-4934.

Correction

In notice EIS-01-4934, beginning on page 1 of the enclosed EIS-01-4934, the following corrections:

1. In the Address section, on page 1 of the enclosed EIS-01-4934, the address immediately following the heading "Bureau of Land Management" is "http://www.blm.gov/eis/prop/projects/01-4934.html".
2. In the Introduction section, on page 1 of the enclosed EIS-01-4934, the first paragraph of the Introduction is "Additional information is available at my home office or by e-mail at blm@blm.gov."

Dated: March 1, 2003

For the Director

APPENDIX E

NOTICE OF INTENT TO PREPARE AN EIS

The on-line version of the Notice of Intent to Prepare an EIS can be found at:

<http://www.blm.gov/nhp/news/regulatory/index.htm>

[Federal Register: March 10, 2003 (Volume 68, Number 46)]

[Notices]

[Page 11406]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr10mr03-55]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-1020-24 1A]

RIN 1004-AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the proposed Amendments of the Bureau of Land Management's grazing administration regulations and announcement of public meetings; correction.

SUMMARY: The Bureau of Land Management (BLM) in this document corrects one internet address and removes reference to another internet address to which the public cannot get access that appear in the notice of intent to prepare an environmental impact statement for proposed amendments to BLM's Grazing Administration Regulations, published in the Federal Register of March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, 202-452-5042.

Correction

In notice FR Doc. 03-4934, beginning on page 10,030 in the issue of March 3, 2003, make the following corrections:

1. In the Addresses section, on page 10,031 in the first column, correct the internet address immediately following the subheading "Direct Internet response" to read: "<http://www.blm.gov/nhp/news/regulatory/index.htm>".
2. In the Supplementary Information section, on page 10,032, in the first column, correct the final paragraph of the notice by revising it to read:

"Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at any State Office or field office of the Bureau of Land Management."

Dated: March 5, 2003.

Jim Hughes,

Deputy Director, Bureau of Land Management.

[FR Doc. 03-5717 Filed 3-7-03; 8:45 am]

BILLING CODE 4310-84-P

APPENDIX F SOCIAL IMPACT ASSESSMENT METHODS

Draft EIS - Appendix F

As part of the Social Impact Assessment (SIA) process, a series of focus group discussions were conducted with selected individuals in the West. The purpose of the focus groups was to:

- Review the proposed changes to grazing regulations;
- Assess whether the proposed changes would create potential positive or negative social effects on the respondents, their communities, and people who utilize BLM lands in similar ways;
- Identify the distribution of any positive or negative social effects from the proposed changes.

To capture potentially small differences in effects, three sets of focus groups were conducted. One set each occurred in Idaho, Idaho Springs, Oregon, Oregon, and Albuquerque, New Mexico. These regions were chosen because they presented two different types of conditions and levels of dependence on BLM grazing allotments. Idaho is characterized by high mountain grazing with relatively low BLM and Forest Service allotments during spring and summer grazing. Oregon presents a mix of forest and riparian allotments with varying degrees of dependence on BLM allotments in riparian areas and forests. Finally, Albuquerque provided access to a mix of forest types, including riparian, forest, and shrubland, and with some year-long grazing permits on BLM land.

Each set of focus groups included one group each of grazing producers, recreational users, and environmental and conservation groups. Participants were selected on the basis of their involvement with BLM grazing during the past or potential they held in grazing and were involved. This produced a mix of participants with varying degrees of involvement with a mix of interests in grazing, including riparian, forest, and shrubland, and with some year-long grazing permits on BLM land.

Social effects were assessed according to a number of categories of impact variables including changes in population, community and institutional structure, quality of life, and recreation, individual and family changes, and community resources. Community Resources Committee (CRC). After the focus groups were finished, effects of any size or nature fell into the following categories:

- Community and Institutional Structure – changes in group and institutional structure with the BLM, changes in the community structure and social stability;
- Individual and Family Changes – changes in attitudes toward and participation in the policies perceived changes in family structure, changes in local social networks, changes in how groups fit into the community;
- Community Resources – perceived risk to and changes in participants' environment.

Some of these effects were larger than others. Other effects fell completely on one of the three groups. Many of these effects are also very far from the proposed changes to "Forest and Shrubland" of riparian and the groups that represent the "Forest" area they represented as direct effects if they were related directly to the proposed action. Other effects were of a more indirect nature brought on by the direct effect. Community resources were also of a more indirect nature from the proposed action and all other changes. The indirect effects were

APPENDIX F

SOCIAL IMPACT ASSESSMENT METHODS

As part of the Social Impact Assessment concerning proposed amendments to BLM grazing regulations, focus groups were conducted with selected constituents in the West. The purpose of the focus groups was to

- Review the proposed changes to grazing regulations;
- Assess whether the proposed changes could create potential positive or negative social effects on the respondents, their communities, and people who utilize BLM lands in similar ways;
- Identify the distribution of any positive or negative social effects from the proposed changes.

To capture potential regional differences in effects, three sets of focus groups were conducted. One set each occurred in Salmon, Idaho; Ontario, Oregon; and Albuquerque, New Mexico. These regions were chosen because they presented three differing types of ranching and levels of dependence on BLM grazing allotments. Salmon is characterized by high-mountain grazing with reliance on both BLM and Forest Service allotments during spring and summer grazing. Ontario captured a mix of desert and mountain allotments with varying degrees of dependence on BLM allotments of differing durations and seasons. Finally, Albuquerque provided access to a mix of desert types experiencing multiple years of severe drought and with some year-long grazing permits on BLM land.

Each set of focus groups included one group each of grazing permittees, recreational user groups, and environmental and conservation groups. Participants were recruited on the basis of their involvement with BLM grazing decisions in the past or positions they hold in groups that were involved. This produced a mix of permittees of with various-sized operations, recreationists with a wide variety of interests including hiking, off-highway vehicle use and equestrian events, and conservation and environmental groups ranging from Trout Unlimited to active pressure groups such as the Western Watersheds Project.

Social effects were assessed according to standard categories of impact variables consisting of population changes, community and institutional structures, political and social resources, individual and family changes and community resources (Interorganizational Committee 1994). After the focus groups were finished, effects of any size or nature fell into the following categories:

- Community and Institutional Structures—changes to group and individual relations with the BLM; changes to basis for community economic and social stability;
- Individual and Family Changes—changes in attitudes toward and perceptions of the policies; perceived changes to family economic situations; changes to local social networks; changes in how groups frame their relation to the resource;
- Community Resources—perceived risk to and changes in participants' environment.

Some of these effects were larger than others. Other effects fell completely on one of the three groups. Many of these effects are what Vanclay (2003) categorizes as changes to "fears and aspirations" of themselves and the groups they represent. The effects were then evaluated as direct effects if they were related directly to the proposed action. Indirect effects occur as a result of the change brought on by the direct effect. Cumulative effects occur over time as changes accumulate from the proposed action and all other changes. Each effect was then

evaluated for regional differences found in the focus groups. Finally, the likelihood that each effect might occur was judged to be good, potential, or unknown. Social effects from the proposed changes to grazing regulation were then incorporated into the effects sections.

As part of the Social Impact Assessment, focus groups were conducted with selected communities in the West. The purpose of the focus groups was to

- Review the proposed changes to grazing regulations.
- Assess whether the proposed changes could have potential positive or negative social effects on the respondents, their communities, and people who utilize BLM land in similar ways.
- Identify the distribution of any positive or negative social effects from the proposed changes.

To capture potential regional differences in effects, three sets of focus groups were conducted. One set each occurred in Salmon, Idaho; Coeur d'Alene and Shoshone, New Mexico. These regions were chosen because they presented three different types of existing and levels of dependence on BLM grazing resources. Salmon is characterized by high-mountain grazing with reliance on both BLM and private service allotments for young and mature grazing. Coeur d'Alene is a mix of private and BLM allotments with varying degrees of dependence on BLM allotments for different durations and seasons. Finally, Shoshone provides access to a mix of direct types representing multiple years of severe drought and with some year-long grazing reliance on BLM land.

Each set of focus groups included one group each of private permittees, recreational users, and environmental and conservation groups. Participants were recruited on the basis of their involvement with BLM grazing decisions in the past or positions they held in groups that were involved. This produced a mix of participants of both veteran and neophyte ranchers with a wide variety of interests including hiking, off-highway vehicle use and equestrian events, and conservation and riparian management. Groups ranging from United to active pressure groups such as the Western Watersheds Project.

Social effects were assessed according to standard categories of impact and their occurrence of population change, community and institutional structure, political and social structure, individual and family change and community structure (National Academy of Sciences 1994). After the focus groups were finished, efforts of any size or nature that may be following categories:

- Community and Institutional Structure - changes in group and individual relations and the BLM, changes to basis for community economic and social stability;
 - Individual and Family Changes - changes to individual and perceptions of the political, perceived changes to family economic stability, changes to local social structure; changes in how groups frame their relation to the resource;
 - Community Resources - perceived risk to and changes in perceptions, availability.
- Some of these effects were larger than others. Other effects did completely on one of the five groups. Many of these effects are what Vachon (2003) categorized as changes in "level and awareness" of themselves and the groups they represent. The effects were also categorized as direct effects if they were related directly to the proposed action. Indirect effects were the result of the change brought on by the direct effect. Community effects were those that changed relationships from the proposed action and all other changes. These effects were the

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